

**ODYSSEY OF THE CVE (CENTER FOR VETERANS  
ENTERPRISE)**

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**JOINT HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND  
INVESTIGATIONS  
AND THE  
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY (EO)  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
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**ODYSSEY OF THE CVE (CENTER FOR  
VETERANS ENTERPRISE)**

**Thursday, August 2, 2012**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
JOINT WITH THE  
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY,  
*Washington, D.C.*

The Subcommittees met, pursuant to call, at 10:03 a.m., in Room 334, Cannon House Office Building, Hon. Bill Johnson [Chairman of the Subcommittee on Oversight and Investigations] presiding.

Present from Subcommittee on Oversight and Investigations: Representatives Johnson, Roe, Benishek, Donnelly, McNerney, and Barrow.

Present from Subcommittee on Economic Opportunity: Representatives Stutzman, Bilirakis, Huelskamp, and Walz.

**OPENING STATEMENT OF CHAIRMAN BILL JOHNSON,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

Mr. JOHNSON. Good morning. This hearing will come to order.

I want to welcome everyone to today's joint hearing on the Center for Veterans Enterprise.

I thank the Members of the Subcommittee on Economic Opportunity for their participation and their efforts in improving the process for veteran-owned and service-disabled veteran-owned small businesses to conduct business with the VA.

The two Subcommittees have worked throughout this Congress to improve the certification process for veteran-owned and service-disabled veteran-owned small businesses or as we refer to them VOSBs and SDVOSBs.

We have patiently waited for signs of progress following the installation of a new executive director of small and veteran business programs at the VA. And while some improvements have been made, unfortunately the goals established nearly a year ago have yet to be achieved.

This Committee has an oversight responsibility to the American people to ensure that tax dollars administered by the VA are going to legitimate, qualified veteran-owned businesses.

I am hopeful that today's hearing will encourage and assist the VA in reaching their goals of improving the CVE once and for all.

As this Committee's own investigations and multiple Government Accountability Office investigations have shown, the ad hoc processes implemented by the CVE to verify and reverify businesses are not working. The recommendations made by the GAO and the VA's inspector general go unheeded.

Regardless of the reasons, the time has come for the CVE to take a hard look in the mirror, dig down to the root of the problem and fix it.

I can assure you veteran business owners are losing patience. This Subcommittee is losing patience and the American people are losing patience.

With the attention that this issue has received, the findings of the recent GAO study, Service-Disabled Veteran-Owned Small Business Program, Vulnerability to Fraud and Abuse Remains, are very troubling.

One of the many flaws in the system substantiated by GAO includes the VA's providing GAO with seven different accounts of how many SDVOSBs are verified by the CVE under the Veterans Benefits Healthcare and Information Technology Act of 2006 and the Veterans Small Business Verification Act of 2010.

Given the amount of resources, we have urged the VA to commit to the CVE, it is safe to say we expected better than this.

Over the past several months, this Committee provided the department with feedback and input regarding the CVE's reverification problem. With this in mind, we welcome the secretary's recent announcement that the VA will move from annual reverification to a biannual reverification, something this Committee had been strongly urging the VA to do for a long time.

While this move is commended, the problems plaguing the CVE go beyond reverification. For instance, the VA's decision to ignore the Small Business Administration's regulations regarding ownership and control of a business has resulted in unnecessary problems.

The VA's choice to create its own standards for ownership and control has led to the CVE applying inconsistent standards to businesses applying for verification.

In some instances, these arbitrary standards involve requests that are invasive and have needlessly hurt legitimate veteran-owned small businesses.

It is not only the legislative branch that believes the CVE's improvised standards and reasoning is lacking, but also the judicial branch.

This past March, a Federal district judge for the District of Columbia stated in an opinion that, and I quote, "Several of the grounds cited by the CVE as a basis for denying the application for inclusion in the VetBiz VIP database are described in such generalized and ambiguous terms that the court is essentially left to guess as to the precise basis for the agency's decision."

Unfortunately, this characterization describes the experience of many businesses who have applied for certification and have been denied.

On July 11th, Chairman Stutzman and I sent a letter to Secretary Shinseki detailing these and other problems and we continue to await a response.

Today's hearing provides an opportunity to candidly discuss CVE's failures and where and how it can be improved.

I want to thank all of our witnesses for their participation today and I look forward to the testimony.

I now yield to Chairman Stutzman of the Subcommittee on Economic Opportunity for his opening statement.

[THE PREPARED STATEMENT OF HON. JOHNSON APPEARS IN THE APPENDIX]

**OPENING STATEMENT OF CHAIRMAN MARLIN STUTZMAN,  
SUBCOMMITTEE ON ECONOMIC AND OPPORTUNITY**

Mr. STUTZMAN. Thank you, Mr. Chairman.  
And good morning to you all.

Everyone here knows about the problems VA has had implementing the small business provisions of a series of Public Laws beginning with Public Law 109-461. And we will hear more about it today, I am sure.

While addressing those continuing issues is important, especially those which may include criminal activity, the past is not my focus here today.

I want to know how and equally important when VA will put in place the systems and policies that will shorten the time to be approved, decrease the level of effort needed to pass muster, and lower the cost and finally create a community of veteran-owned businesses that is reasonably free from unqualified companies.

This is not just a VA task. There are issues we in Congress need to deal with as well. For example, current law effectively eliminates any company funded through investors because of the hundred percent control requirement. That means should we adopt a less stringent definition of control which then begs the question of how to prevent rent-a-vet operations from flourishing at the expense of fully qualified companies.

Another issue is what VA describes as negative control where a veteran majority owner can potentially be thwarted by a non-veteran minority owner.

Another is how to best judge the level of control when there is a disparity in the resumes of a veteran majority owner and a minority owner.

Finally, there is the issue of recertification. I believe the current approach of recertifying every business, whether every year or every two years or three years or four years, may overwhelm CVE resources.

Let me explain using an assumed increase of 2,000 approved businesses annually.

[Chart]

Mr. STUTZMAN. As you can see on the monitors that we have above here that if we use the current two-year recertification process, at the end of the tenth year, CVE will be recertifying 18,000 businesses.

Even using what Mr. Leney will describe as the simplified recertification process, I do not see how that magnitude of workload can be managed with a significant increase in resources beyond the current \$30 million per year.

We need another approach, perhaps a risk-based one that recertifies companies only when they are identified as a potential contract winner.

So, Mr. Leney, you have your work cut out for you. And I know you know that as well. And I truly want you to succeed because the work that you do will be good not only for taxpayers, it will be good for the veteran community as well.

With that, Mr. Chairman, I yield back.

[THE PREPARED STATEMENT OF HON. STUTZMAN APPEARS IN THE APPENDIX]

Mr. JOHNSON. Thank you, Chairman Stutzman.

I now yield to Ranking Member Donnelly for his opening statement.

**OPENING STATEMENT OF HON. JOE DONNELLY, RANKING DEMOCRATIC MEMBER, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

Mr. DONNELLY. Thank you, Mr. Chairman.

The veteran-owned small business and service-disabled veteran-owned small business programs are designed to foster veteran entrepreneurship by increasing available business opportunities. Business ownership is especially a great opportunity for veterans with disabilities.

As part of the process to ensure opportunities for verified service-disabled veteran-owned businesses, verified businesses are assured a portion of the VA's contracts and in order to ensure that only those firms that are actually SDVOSBs or VOSBs are awarded contracts, the VA Center for Veterans Enterprise is responsible for verifying the veteran ownership of respective businesses.

Companies that have been determined to be eligible are listed in the VetBiz Vendor Information Pages database. CVE, however, continues to struggle with the verification process as progress confirming veteran ownership of firms listed in the VetBiz database has been slow and despite the slow pace of verification, the GAO remains concerned that CVE is unable to control its own program.

Specifically in an ongoing investigation, the GAO found that CVE provided conflicting information on a number of reverifications they have done under the old law and the new law. We will give CVE the opportunity to clarify this.

CVE's move to require reverification every two years may reduce the backlog, but unless those businesses who are considered verified met eligibility requirements in the first place, we risk awarding ineligible businesses VOSB and SDVOSB sole-source and set-aside contracts.

We must find the proper balance among verifying business ownership or control, making the process easy and streamlined, and protecting taxpayer dollars from fraud.

I look forward to hearing from our witnesses.

Thank you, and I yield back.

Mr. JOHNSON. Thank you, Ranking Member Donnelly.

I now invite our first panel to the witness table, and I see he is already there. We will hear from Mr. Tom Leney, Executive Director of the Small and Veteran Business programs at the VA's Office of Small and Disadvantaged Business Utilization or OSDBU.

Mr. Leney, your complete written statement will be made part of the hearing record, and you are now recognized for five minutes.

**STATEMENT OF THOMAS J. LENEY, EXECUTIVE DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, U.S. DEPARTMENT OF VETERANS AFFAIRS**

Mr. LENEY. Thank you, Chairman Johnson, Chairman Stutzman, Ranking Member Donnelly, Members of the Subcommittee. Thank you for inviting me to testify on the status of VA's Veteran-Owned Small Business Verification Program and our response to the Government Accountability Office report.

The VA has made substantial progress in improving the VA Verification Program. These improvements have reduced the potential for ineligible firms to take improper advantage of the Veterans First Program at the VA that was established by this body under Public Law 109-461 while at the same time making it easier and faster for legitimate Veteran-owned small businesses to gain greater access to the VA procurement opportunities.

The VA has addressed the issues raised in the GAO report and believes the current verification process provides a high level of assurance that only eligible firms are verified.

We have improved our quality control. We have expanded our program for referral of firms that we suspect are misrepresenting their status to the Office of the Inspector General and to the Debarment Committee.

At the same time, we have taken action to improve the process in order to enable eligible firms to be verified quickly and efficiently. By regulation, VA has 90 days to make an initial decision where practicable.

When I appeared before you a year ago, it took more than 130 days on average to process an initial verification application. In April, we had reduced that average time to 73 days.

In 2011, only one-third of initial applications as noted in the GAO report were approved. In June, due in part to our increased efforts to educate potential applicants on how to become compliant with the regulation, more than 60 percent of initial applicants were approved.

CVE has improved the verification process and is able to track its inventory of firms. Unfortunately, due to limitations in the capabilities of our verification case management system, we must do so off-line and that has resulted in problems in providing accurate aggregate reports.

I can say with confidence, however, that no firm appears in VIP as eligible for an award unless it has been verified as owned and controlled by a Veteran.

To ensure that it only verifies eligible firms, CVE has made a number of improvements. We have established a Legal Review Program to address potential errors. We have strengthened the review of requests for reconsideration by adding a legal review. We have established a risk management program. We have established a formal referral process to the Office of the Inspector General and the Debarment Committee.

In addition to these kinds of actions we have taken to reduce the risk of verifying ineligible firms, we have also made improvements in the process aimed at reducing the time it takes to receive a determination of eligibility.

We have established an online application process. We have expanded our customer service help desk. We have created a simplified reverification process to get at some of the issues that were raised by you, Chairman Johnson, here. And we have initiated a Verification Assistance Program.

The impact of improvements has been limited by the high rejection rate of initial applications. In 2011, almost two-thirds of the initial applications were denied.

Our analysis of this result revealed that most rejections occurred as a result of a lack of understanding of the requirements of the regulation, not fraudulent intent.

In order to address this problem, we have taken action to help Veterans better understand the regulatory requirements. We developed verification assistance briefs. We have provided briefings to veteran businesses on how to meet the standards.

In response to stakeholder recommendations, we have developed an online verification self-assessment tool and we have partnered with the Procurement Technical Assistance Centers and veteran Service Organizations to provide counseling and to answer questions from applicants.

In particular, I would like to acknowledge the support of VET-Force and the National Veterans Small Business Coalition for their active support of this effort.

Some have raised concerns about the regulation itself. We have coordinated with the SBA to ensure that the VA regulations concerning verification are consistent with the SBA regulations covering the standards for government-wide SDVOSB program.

We will continue this coordination as we have initiated a formal process seeking input from stakeholders in order to draft a significant change in the regulation.

The VA has made significant progress in the verification program. We have overcome many of the challenges and vulnerabilities raised by the GAO and the IG. Bottom line, the program works.

So far this year, 20 percent of VA procurements went to veteran businesses. That is real money to real Vets.

Thank you, Mr. Chairman. I look forward to taking your questions.

[THE PREPARED STATEMENT OF THOMAS J. LENEY APPEARS IN THE APPENDIX]

Mr. JOHNSON. I thank you for your testimony.

We will now begin with the questioning.

Mr. LENEY, you heard the quote that I read just a little bit ago from the Federal district judge for the District of Columbia who said several of the grounds cited by the CVE as a basis for denying the application for inclusion in the VetBiz VIP database are described in such generalized and ambiguous terms that the court is essentially left to guess at the precise basis for the agency's decision.

So what steps has the CVE taken to ensure that decisions for appeals are sufficiently reasoned so that if the issue does go to court, a judge can properly exercise judicial review?

Mr. LENEY. Sir, I find that judicial concern troubling.

Mr. JOHNSON. Okay. I know you find it troubling. And we have got a lot of witnesses to hear from today. I do not want to spin our wheels.

Have you made any improvements as a result of that district judge's finding and the input that we have given you from this Subcommittee to make sure that appeals are sufficiently reasoned so that they can be understood? Has any action been taken?

Mr. LENEY. Yes, sir. As I mentioned in my oral statement, every request for reconsideration receives a legal review from our Office of General Counsel on the basis of "Are we prepared to defend it in court."

Mr. JOHNSON. Have you made any changes to your process to make sure that they are efficient?

Mr. LENEY. That is, in fact, a change to the process. Every one of our requests for reconsideration receives a legal review.

Mr. JOHNSON. Okay. And that was not being done prior to?

Mr. LENEY. That was not being done prior.

Mr. JOHNSON. Okay. Does VA possess the necessary expertise in making determinations of ownership under their current process?

Mr. LENEY. Yes, sir.

Mr. JOHNSON. Okay. VA does not allow for affiliations whereas—because you testified just a few minutes ago that your process is consistent, I think, with—your regulations are consistent with SBA's regulations if I heard you correct.

Mr. LENEY. Yes, sir.

Mr. JOHNSON. The VA does not allow for affiliations whereas government-wide rules do allow for affiliations.

Why is there a difference between SBA and VA's interpretation?

Mr. LENEY. Sir, in response to engagement with this Committee, we undertook a review of our regulation with respect to 13 CFR 125 and 13 CFR 124 which are the SBA regulations.

We found that not only are our regulations similar, our interpretations are similar as well. In fact, based on our review to date, the SBA under its regulations routinely reaches similar if not identical decisions as the VA.

We have undertaken a review of the regulation. We are doing that in collaboration with the SBA. And, in fact, one of the elements if you compare the two regulations, our regulation is much more detailed than 13 CFR 125.

Mr. JOHNSON. What about 13 CFR 121, Mr. Leney? That is also a part of this discussion. That describes the intent of the Congress. How do you involve 13 CFR 121 in your process?

Mr. LENEY. Sir, the 13 CFR 121 is one of the regulations we are now looking at as part of our review of our regulations.

Mr. JOHNSON. But it has been there for a long time and we have suggested that you look at it and that you include it for a long time. And you are just now looking at it?

Mr. LENEY. Sir, my focus has been to implement the regulation that the VA utilizes for the Verification Program.

Mr. JOHNSON. But shouldn't the regulation be based on the law, Mr. Leney?

Mr. LENEY. The regulation, we believe, is based on the law, sir.

Mr. JOHNSON. But not if you exclude 121.

Mr. LENEY. Sir, like I say, the Secretary has directed us to review the regulation. We are doing so in conjunction with the SBA and stakeholders. I cannot speak to why it was not done previously, but it is being done now.

Mr. JOHNSON. How long have you been here, Mr. Leney?

Mr. LENEY. Sir, I have been here a year.

Mr. JOHNSON. And this is not the first time you have testified before this Subcommittee?

Mr. LENEY. It is not the first time.

Mr. JOHNSON. We have talked about 121 before?

Mr. LENEY. Yes, sir.

Mr. JOHNSON. Okay. So why are you waiting for the Secretary to tell you to do something that the law clearly requires?

Mr. LENEY. Sir, as I stated, my focus has been to implement the regulation that is in place with the VA. That regulation is longstanding and has been tested. We are now reviewing that regulation based on an extensive series of stakeholder engagements and I will be happy to come back and report the results.

Mr. JOHNSON. You will get a chance to come back, Mr. Leney, because it is a violation of the law. 121 is part of the process and that is what this Subcommittee demands. It is what the American people demand.

That is why we are losing patience with the process because we keep making these suggestions and we keep spinning our wheels and chasing this same rabbit around the corner over and over and over again.

So I am sure I will have more questions. I am going to go now to Mr. Stutzman for his questions.

Mr. STUTZMAN. Thank you, Mr. Chairman.

I believe the VA has a fairly robust statistical analysis division; is that correct?

Mr. LENEY. Sir, I cannot speak to that. I do not know.

Mr. STUTZMAN. You do not know that?

Mr. LENEY. I do not know the extent of the statistical analysis—

Mr. STUTZMAN. You do have one?

Mr. LENEY. I cannot speak to that. I do not know.

Mr. STUTZMAN. Okay. Well, the answer should be yes.

In my opening remarks, I mentioned the effects of recertification and showed a very simple model of the potential effect of the current recertification process which is still up on the screen.

So, therefore, I am asking the VA to provide Chairman Johnson and myself with an operational analysis of keeping the current two-year cycle in place as well as other alternative systems that would be appropriate.

If you could cover a ten-year time period, and I would ask that you provide that to us during the first week of September.

I would also ask that you consult with staff, VA staff in identifying alternatives as the analysis begins so that we can see what your responsibilities will be and how you plan to deal with the recertification process. Is that possible?

Mr. LENEY. We will be happy to provide that analysis, sir.

I would note that it is important to keep in mind of the over 6,000 firms currently in VIP, fewer than 3,000 of them do business with the VA.

Mr. STUTZMAN. Okay.

Mr. LENEY. So the notion that we would continue to see a huge increase in firms in the VIP may be a fundamental assumption that we need to look at.

Mr. STUTZMAN. Okay. Do you believe you have a good handle on the number, actual numbers of firms in the VIP database?

Mr. LENEY. Yes, sir.

Mr. STUTZMAN. I want to talk a little bit about the budget for your department. Currently your budget is about \$30 million; is that correct?

Mr. LENEY. Sir, the budget for OSDBU is \$33 million.

Mr. STUTZMAN. Thirty-three million?

Mr. LENEY. The budget for CVE is approximately \$24 million.

Mr. STUTZMAN. Okay. And that comes from the VA Supply Fund; is that correct?

Mr. LENEY. Yes, sir.

Mr. STUTZMAN. And do you anticipate that this is going to increase your budget and what is your position on continuing your source of funding in the future?

Mr. LENEY. Sir, I have received all the resources that are necessary to perform the mission from the Supply Fund. The Supply Fund provides flexible and rapid response to changes in the mission.

This mission has expanded in scope and complexity even in the, and correction, in the 15 months I have been at the VA. And the Supply Fund has enabled us to respond to those changes.

Mr. STUTZMAN. Who is in control of the Supply Fund?

Mr. LENEY. Sir, there is a board that manages and governs the Supply Fund.

Mr. STUTZMAN. Okay. Could you give us an idea of what is the process for deciding to send a firm to the IG or begin debarment actions?

Mr. LENEY. Sir, the CVE makes a determination of eligibility for participation in the Vets First Program. If our examiners and evaluators determine there is risk that the firm is misrepresenting itself, we have a process whereby we do site visits.

If, in conjunction with a site visit, we make a determination that there has been misrepresentation, we refer the firm to the Office of Inspector General.

Mr. STUTZMAN. Do you have any firms that are still in the database that are classified under self-certification?

Mr. LENEY. No, sir. We have no firms in VIP who are eligible to receive awards from the VA that have not been verified.

Mr. STUTZMAN. And how many firms do you have under the Lite process or the—

Mr. LENEY. Right now as of the 31st of July, we had 6,150 firms in VIP; 3,825 of those firms have been verified under the process that was established as a result of Public Law 111-275, and 2,325 of those firms were verified under the earlier process.

Mr. STUTZMAN. Is that all of them? All of them would have some sort of certification or verification?

Mr. LENEY. Sir, all the firms in the database are in one of two categories.

Mr. STUTZMAN. Okay. All right.

Mr. LENEY. They are either eligible to receive awards from the VA. They are verified and current. We have a category of firms in VIP that is called reverification. Those are firms whose verification period has expired. However, we have reached out to them to initiate reverification. And rather than disadvantaging those firms because they have expired, we have kept them available in the database. They are eligible to submit proposals. They are not eligible to receive an award.

And we have established a process by which if they are pending an award, we call it fast tracking their application to determine whether or not they are eligible. If they are eligible, they may receive the award. If not, they are dropped from the VIP database.

Mr. STUTZMAN. Okay. Thank you, Mr. Chairman. I will yield back.

Mr. JOHNSON. I thank the gentleman for yielding back.

I will now go to Ranking Member Donnelly for his questions.

Mr. DONNELLY. Thank you, Mr. Chairman.

Mr. LENEY, thank you for being here.

One of the key things obviously is we have Vets from all of our conflicts who need jobs, who want to be employed.

And so when we see various businesses turned down, do we have some type of ability to work with them? You know, there are some who are just not eligible for various reasons. You know, maybe they are not Veterans or whatever.

But for the ones who are trying to get paperwork right, who are trying to figure the system out, who are trying to become eligible, does the VA have an advocate for them to sit down with them and say, okay, listen, your paperwork is all fouled up, you do not have this and this and this right, but these are the things you need to do and we will work through this with you to try to make sure you can become one of our guys?

Mr. LENEY. Sir, we have done two things. First, in the reconsideration process, when I reported to this Committee a year ago, the reconsideration process was limited to a determination of whether or not CVE had made an error in its initial determination.

Subsequent to that hearing and in conversation with members of your staff, we changed the reconsideration process to give Veterans a second chance, that, if in their initial determination they were found to be noncompliant with a regulation, we laid out what the rationale for noncompliance was and under the request for reconsideration process, we enabled them to make corrections to those elements of their application that are noncompliant and resubmit. That is the first thing we did.

The second thing we have done is we have partnered with a number of external organizations to provide counseling for applicants to provide this kind of assistance.

We have also provided verification assistance briefs which lay out in plain language what is required to be compliant with the regulation.

We have just developed a self-assessment tool that the veteran can walk through every element of the regulation to determine

whether or not his business model is consistent with the regulation.

Mr. DONNELLY. The reason I ask this is it is clear some folks do not qualify, but then it is also clear that some folks do not qualify simply because they are trying to work through the maze.

And so I think one of the things the VA ought to do is be an advocate to help them get through the maze, that they served us, they served our country, and we should be there for them in this process to say, hey, listen, your stuff is not right yet, but we will work with you. We will get you to that point.

And one of the other issues is that we are at 20 percent. We are happy for the 20. Our goal is to go higher and to try to have even more veteran work done.

So how do we make veteran businesses that are out there, whether it is in Idaho or in Indiana where I am from, aware that there is an opportunity here, there is an opportunity for business to be part of the VA vendor group?

What is being done now and what is being looked at to try to make sure that every Vet who comes home, young man or woman comes home from Afghanistan wants to start their own business, how do we make it clear to them that, hey, one of your clients can be the Veterans Administration?

Mr. LENEY. Yes, sir. We have done several things. One, we have engaged in the redesign of the Transition Assistance Program. And the new Transition Assistance Program will be rolling out a veteran entrepreneurship module that helps educate Veterans about entrepreneurship opportunities.

We have worked with our acquisition community to reach out to Veterans. At our National Veterans Conference in Detroit, we brought over 650 procurement decision-makers to Detroit and they spent three days focused on engaging with veteran small businesses. We reached out to 47,000 veteran small businesses to let them know about that opportunity to connect directly with procurement decision-makers.

Mr. DONNELLY. How do you find all the Veteran-owned small businesses out there?

Mr. LENEY. How do we find them, sir?

Mr. DONNELLY. Yes. Like if there is one in Rochester, Indiana and the man or woman running it, they have a little office supply company, is there any way for you to find them or do they have to find you?

Mr. LENEY. Sir, there is approximately, and I am not exact in my figures, I believe the Census Bureau says about over three million Veteran-owned businesses.

Mr. DONNELLY. Uh-huh.

Mr. LENEY. About two million of them have one employee. We start with the CCR which is the registry by which veteran businesses register to do business with the Federal Government. And that has been the group that we focused on.

Mr. DONNELLY. Okay, because my goal in this is for the 20 percent to become 25 percent, the 25 percent to become 30 percent, and for the other 70 percent, and up and up, and for the companies who are not Vet owned to see that they have as many Vet employees as possible.

Mr. LENEY. Sir, I share your goal.

Mr. DONNELLY. —I am hopeful and I am sure that is the goal on your part as well, but that is what we want to head towards. Thank you very much, sir.

Mr. JOHNSON. I thank the gentleman for yielding.

We will now go to Mr. Benishek for his questions.

Mr. BENISHEK. Thank you, Mr. Chairman.

Good morning.

Mr. LENEY. Good morning, sir.

Mr. BENISHEK. How are you?

You know, we talked last week a little bit and, you know, I have a Veteran-owned business in my district that, you know, went through this application process and, you know, asked our office to help with the process.

It just seems like it must be complicated because even after our office talked with your office and, you know, talked to my constituent and his attorney and put them on the right course to, you know, correct the problems with their articles of incorporation and all that, then they reapplied and they still got rejected.

Apparently, you know, my staff, their attorney and them could not figure out how to do it properly even after going through that, you know, whole process of getting my office involved, getting your office involved.

And it seems to me that this has got to be a pretty complicated process considering also that you have got 60 percent initial rejection rate.

How many people are rejected the second time? Is that a very common occurrence, like what happened to my constituent?

Mr. LENEY. Sir, approximately 40 percent are rejected after a request for reconsideration.

Mr. BENISHEK. It just seems to me that there is more people being rejected for technical problems with the application than they are for being fraudulent. Is that your—

Mr. LENEY. Sir, firms are being rejected for being noncompliant with the regulation. Having examined over the last year the rationale for denial, a very small percentage are rejected because we perceive them to be fraudulent.

All the ones that we perceive to be misrepresenting or fraudulent we now refer to the Office of Inspector General.

Mr. BENISHEK. Isn't that sort of a problem with the way you are doing things then? I mean, it seems to me that, you know, most of them are small businesses because they are, you know, not shareholder companies and, you know, within the means of, you know, hiring a corporate attorney which they have to figure all this out and they still cannot get it right.

It seems like it must be an over-complicated process to me if even on the second application there is 40 percent rejection. So, you know, I do not know the answer to that, but it seems to me that you should just reevaluate your whole system.

And I am not as familiar with some of the details as some of the other Members of the Committee perhaps, but, you know, these are just regular people trying to get communication with the government and you know how difficult it is to get some sort of a reasonable answer out of the government. It makes it frustrating for our

Veterans who are trying to, you know, legitimately because of all these problems.

Let me ask you one other question and this is sort of a technical detail maybe. One of the reasons why my guy was rejected was that although he has majority owner, my veteran had the majority ownership of the company, on his death, you know, the—because he was dying, then his stock would go to his other shareholders, that made it ineligible somehow? I mean, how does that—

Mr. LENEY. Upon the death of the Veteran, the firm would no longer be eligible.

Mr. BENISHEK. Right. But because that is in the articles, then the firm is not eligible today?

Mr. LENEY. I cannot speak to the specific instance because I do not know the details. But the majority of firms that are denied eligibility are denied for a failure of the veteran to have a hundred percent control. That is the standard that is in the regulation. And that standard is the same standard that is applied in the SBA regulations.

Mr. BENISHEK. So a majority ownership does not—

Mr. LENEY. Majority ownership is necessary, but not sufficient. Our challenge, sir, is we are balancing the—with this regulation the concerns that you have read about in the GAO report, the concerns you have read about in the IG report of ensuring that, as was mentioned by one of the Members, you know, rent-a-Vets do not occur, that we have only eligible veterans being part of the program.

So we are balancing that with a process that is expected to have a high standard of execution with having a process that is easy for a veteran to get through.

I having spent a great deal of time looking at the process and the regulation, that is why we have put out some of these. Sometimes reading a regulation is a tough thing to do. That is why we have put out assistance briefs, et cetera.

Mr. BENISHEK. Well, I tend to agree with Mr. Donnelly that it just seems to be overly complex and that you should be providing these firms with some further assistance because obviously, you know, after coming to, you know, coming to you, coming to me, you know, us talking to you, talking to their attorney, they still could not get it right.

And, you know, the people, I know these people. They are not uneducated people. They are trying to comply and yet having gone through that process once, they still were unable to comply. And I just think there is a failure somewhere of making it so difficult for people to get into this program.

I see my time is up. Thank you.

Mr. JOHNSON. Thank you for yielding.

We will now go to Mr. McNerney for his questions.

Mr. MCNERNEY. Thank you. Thank you, Mr. Chairman.

Mr. LENEY, a few minutes ago, you stated that about 60 percent of applicants were denied in 2011, but because of outreach efforts of your department, that number has decreased to 30 percent.

But you also stated that most of those applicants that were denied were not denied because of fraudulence.

So what percentage of applicants are denied because of fraudulence? Is that number consistent between 2011 and today?

Mr. LENEY. Every application that we believe has intentionally misrepresented their status we refer to the Office of Inspector General. So far in 2012, we referred 59 firms. In 2011, we referred 25 firms.

The difference in those numbers is less a function of the incidence of potential misrepresentation than it does to represent a change in the establishment of a more rigorous process and formal process for review and referral.

So 59 firms, again, that is less than five percent of those firms who apply. The vast majority of the firms that I said before have a business model that it is not compliant with the regulation. And some of it is they are ignorant of the fact that their business model does not comply with the regulation or they do not like the fact that their business model does not comply with the regulation.

But we verify as eligible those firms whose business model complies with the regulation in place.

Mr. MCNERNEY. Well, what is the most common lack of compliance then that would disqualify a business?

Mr. LENEY. The most common rationale for lack of compliance is on the issue of control of the business. There has been criticisms of the process that it is capricious, subjective.

And, therefore, what we have tried to do is, and the regulation seeks to do, is draw bright lines and to make it clear if a veteran meets the control requirements and the ownership requirements, it is very straightforward. In ownership, do you have 51 percent or more of the ownership.

In control, the standard is 100 percent control which means the veteran can do anything he wants or she wants with that company and none of their partners, none of the other owners can prevent them from doing so.

What we find in many business models is that the minority partners seek to have some control of the business. And the requirement in the current regulation, and that is a regulation we are looking at, but I will tell you there is a wide range of views as to how do you determine 90 percent control, how do you determine 70 percent control.

Mr. MCNERNEY. So in going from a 60 percent rejection rate to roughly half of that, I mean, what you are describing is a fairly complicated process. You know, a veteran wants to apply for business ownership. I do not suppose he has or she has an MBA.

How hard is this application? Is it the difficulty of the application or is it the difficulty in showing ownership? I mean, where is the rub here? I do not quite understand why it is so hard to comply.

Mr. LENEY. Two reasons. And, by the way, I need to clarify for the Committee. I would like to say that the reduction in initial denials is a function of our Verification Assistance Program. I do not believe we have enough data yet to be able for me to state that with great confidence.

We have undertaken an effort to make it very clear to Veterans what their business model needs to look like. Hence, things like our verification assistance briefs.

I will tell you, sir, that probably 80 percent of denials are issues that are very clear cut. They do not take an MBA. They do not take a lawyer.

If you have a board with three people and two of the members of the board are non-Vets and you have an operating agreement or a set of bylaws that calls for governance and control of the firm based on the majority vote of the board, you are noncompliant.

And there have been hundreds of cases where issues that simple or if the members, other members of the board who are non-Vets can put restrictions on the Veteran's ability to transfer, to sell the business, to transfer the business, to make decisions, then that firm is noncompliant. That is not a complicated issue.

Mr. MCNERNEY. Well, how much subjectivity is there in this process?

Mr. LENEY. We have sought to minimize the subjectivity wherever possible which tends to drive us to areas where we have bright lines. That is why the issue of a hundred percent control.

People say, wow, I feel like I am in control of my firm, but I have an investor who wants to make sure that I cannot sell the company out from underneath them because he has invested money in the firm.

The current regulation would define that business model to be noncompliant. Not complicated, but it is a model that that particular business does not fit.

So I think that given the efforts we have made to clarify, given the efforts we have made to draw bright lines, I think there is much less basis to say I just cannot understand what I need to do. It is "my business model does not fit what I need to do to be compliant."

Mr. MCNERNEY. Okay. I think I have run out of time, Mr. Chairman.

Mr. JOHNSON. I thank the gentleman for yielding.

We will go to Dr. Roe.

Mr. ROE. I do not have many questions today, Mr. Chairman.

But just back to control, the definition of control. I have owned some businesses and if I have got 51 percent, I have got control. And anybody that owns 51 percent of the shares in a business is in control of that business.

The last time I looked, you are the majority stockholder unless there is some language in the contract that you have that you are not. But, I mean, that is the point in owning 51 percent. You are in control.

And so that is my question here. What is the definition of control? I think control, if you own 51 percent of General Motors stock, you control that company. You absolutely do. And so by narrowing the definition, do you have to have a—I am not sure whether you own a hundred percent of the stock.

That means you could have no other investors if that is what you are talking about. It would just have to be me, the veteran investing all the money. I think that was where Mr. McNerney was going.

And it sort of confused me when you said—and I get when you say if you have three on the board and two of them can veto, no,

you do not have control of that. You have one vote, not two. If you have got two of the three, you absolutely do control that business.

So you confused me by your definition of control. Explain it to me again. Fifty-one percent is not control.

Mr. LENEY. Fifty-one percent is not control. It is ownership.

Mr. ROE. And that is in the statute.

Mr. LENEY. Simple definition of control is that you as the business owner can do anything you want with that firm and nobody can prevent you from doing so.

Mr. ROE. Let me back up again. Stop right there. If I have got 51 percent of my business, and I have been involved in several, I control that business period.

Mr. LENEY. Sir, that is not the definition applied in the regulation.

Mr. ROE. So what you are saying is, is that control is not only the majority of the stock?

Mr. LENEY. Yes, sir.

Mr. ROE. That is not control?

Mr. LENEY. It is not majority of the stock.

Mr. ROE. And that is written in the regulation where if the veteran does not have a hundred percent—so he cannot get an equity owner? In other words, if I start a business, I am a veteran, if I start a business, I have got to do it with all my money, no outside investors at all, basically just me; is that right?

Mr. LENEY. The regulation does not require a hundred percent ownership. The regulation requires a hundred percent control. You have identified a very real issue for veteran businesses.

If you have a minority owner or an investor—

Mr. ROE. Let me stop there. If I come in, and to Dr. Benishek's point, if I come in as a veteran-owned small business and I come and I make this application and I say to you I have got 51 percent of this company, I control what happens, I have got veto power over everything in my company, but I have got other investors, that means by that definition I cannot get a veteran-owned small business contract?

Mr. LENEY. If your investors can limit your ability to make decisions about that company, you will not be eligible.

Mr. ROE. But I—

Mr. LENEY. An example would be you can have a hundred percent control—

Mr. ROE. I think we are playing board games here.

Mr. LENEY. No, sir.

Mr. ROE. And it is bothering me some because, look, have you ever owned a business before?

Mr. LENEY. No, sir. But I have run businesses. And you are right, no investor is going to give you 100 percent control of his investment.

Mr. ROE. Well, let me back up and say if they invest in your company and you own 51 percent of the stock, they just did that. That is the point in owning 51 percent.

Mr. LENEY. Sir—

Mr. ROE. You can vote on a board all you want to. I do not care if the board—and when you have a vote at the General Motors

board, when one more than a simple majority votes yes, that is what that company does.

Mr. LENEY. Yes, sir. And if you have two non-veterans on a board of three, you can own 100 percent of that company and if those two non-veterans take a vote on the board——

Mr. ROE. No, I got that. I mean, I get two out of three.

Mr. LENEY. Yes, sir.

Mr. ROE. So I understand. That is pretty simple math. I get that. It is when you have 51 percent, that is what I do not.

Anyway, let's go another way. I want to ask also on the business model, and, again, I am learning a lot here, what complies? In other words, what makes you a compliant company? We have sort of muddled this definition, but what else do you have to go through?

As Dr. Benishek brought up, obviously an attorney and his client and so forth. How do you become compliant? What are the criterion to be a compliant company?

Mr. LENEY. Put most simply, you have to have at least 51 percent ownership. You must have 100 percent control. You must demonstrate that you manage the firm's day-to-day operations and set the strategic direction of the firm.

Mr. ROE. Okay. Restate what you just said to begin with. If you have 51 percent ownership——

Mr. LENEY. Yes, sir.

Mr. ROE. —you would not have control if you did?

Mr. LENEY. The regulation does not define 51 percent ownership or even 100 percent ownership as being in 100 percent control.

Mr. ROE. Well, I think we need to re-look at that, Mr. Chairman, because I have never heard where—I always thought if I owned 51 percent of the——

Mr. JOHNSON. Will the gentleman yield?

Mr. ROE. I will.

Mr. JOHNSON. You said you are going toward lines of clear delimitation. Give us the definition of control. You ought to be able to do that. You are the director of this department.

Mr. LENEY. Yes, sir.

Mr. JOHNSON. Tell this Subcommittee right now, tell the people that are listening today what is the definition of control if 51 percent ownership does not qualify. What is it?

Mr. LENEY. The definition of a hundred percent control is that you can do anything you want with that business, make any decision concerning that business to include selling that business for a dollar and no one else in that business to include other owners, other minority owners can do anything to prevent you from doing so.

Mr. JOHNSON. Mr. Leney, do you know of any business in the world that has more than one owner where that definition would qualify? Can you name me one business, one?

Mr. LENEY. I can name you——

Mr. JOHNSON. One?

Mr. LENEY. —six thousand businesses.

Mr. JOHNSON. Where that definition qualifies?

Mr. LENEY. Yes, sir.

Mr. JOHNSON. Under a court of law?

Mr. LENEY. Yes, sir.

Mr. JOHNSON. I would like to see them. Would you write them down and submit them to this Committee?

Mr. LENEY. Yes, sir.

Mr. JOHNSON. I would like you to do that. I question that.

Mr. LENEY. To make it clear, sir, the businesses that can do that are the businesses that are currently in VIP.

Mr. JOHNSON. And you are excluding a lot of veterans' businesses.

And I thank the gentleman for yielding. Would you like to reclaim your time?

Mr. ROE. No. I will yield back.

Mr. JOHNSON. We will go now to Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it.

I have a couple questions. How many days approximately does it take to complete the reconsideration process?

Mr. LENEY. Right now in our most recent calculation, it is over 200 days on average.

Mr. BILIRAKIS. Two hundred days?

Mr. LENEY. Yes, sir.

Mr. BILIRAKIS. That is a long time for a veteran to have to wait.

Mr. LENEY. Very long time.

Mr. BILIRAKIS. Then are they notified immediately once the process is complete, the veteran?

Mr. LENEY. Yes, sir, they are notified.

Mr. BILIRAKIS. How can we improve upon that?

Mr. LENEY. We are improving upon that. We are adding resources to the reconsideration process. The main reason that that process takes so long, is that is the lowest priority in the priority of application examinations.

We give a higher priority to those firms that are undergoing the initial determination because, remember, we made a change to the process. The change to the process was that if you were denied, you have a second chance to correct that which made you ineligible—

Mr. BILIRAKIS. What about the—

Mr. LENEY. —noncompliant.

Mr. BILIRAKIS. —businesses—excuse me, sir. I am sorry. But I want to ask what about the businesses that were denied through no fault of their own? Say that the CVE made a mistake, are they put to the top of the pile or do they have to wait those 200 days for reconsideration?

Mr. LENEY. No, sir. We have a legal review process that if a veteran asserts that we made a substantive error in the determination, we have a legal review process. We normally turn those in less than seven days.

Mr. BILIRAKIS. Less than seven days.

Mr. LENEY. That is a determination did we make an error. And all of those actions are reviewed by our Office of General Counsel.

Mr. BILIRAKIS. Okay. Is the veteran certified immediately once that decision is made?

Mr. LENEY. If there were no other issues, then the veteran is immediately verified. And that does go to the very top of the pile. Those are put in the front of the line because we do not want to

disadvantage a business because of a substantive error. And that is why all of those are reviewed by our Office of General Counsel.

Mr. BILIRAKIS. All right. Well, thank you very much, Mr. Chairman. I yield back.

Mr. ROE. Would you yield just a moment?

Mr. BILIRAKIS. Yes, I will yield to the doctor, sure. Of course.

Mr. ROE. Back to where I was before, is it legislative language? Have we as Congress put you in implementing this in a box as far as determining what a compliant veteran-owned or disabled veteran business is? Is it legislative language that has done that or is it rulemaking and your interpretation?

Mr. LENEY. It is not legislative language, sir. It is rulemaking. And I would—

Mr. ROE. Who made the rule?

Mr. LENEY. Sir, the VA made the rules. And the VA made the rules based on rules that were established by the SBA under its SDVO Program and the 8(a) Program. The rules are the same.

Mr. ROE. So the rules are the same. So I think we need to get into a little later, Mr. Chairman, I do not want to belabor this, but I think this is very critical to a lot of Veterans and maybe other small businesses being able to get business with the Federal Government.

So I yield back.

Thank you for yielding.

Mr. JOHNSON. I thank the gentleman for yielding.

Mr. LENEY, you mentioned just a few minutes ago that you can show thousands, several thousands, I think you said, of businesses that comply with the 100 percent control criteria.

How many of those are sole proprietorships with no other owners in the company?

Mr. LENEY. I can provide that information for the record, but I do not have that on the top of my head.

Mr. JOHNSON. Yeah, I would like to see that as well.

Mr. LENEY. Yes, sir. We can give you that.

Mr. JOHNSON. And can you define for me what day-to-day operations mean, control of day-to-day operations? What is day-to-day operations?

Mr. LENEY. Control of day-to-day operations is focused on the role of the veteran in managing what the firm does on a daily basis.

Mr. JOHNSON. But there is a lot of day-to-day operational decisions that are made. What defines day-to-day operations? A Veteran's role as a manager coming in to work every day does not put them in control nor out of control necessarily of day-to-day operational decisions. What defines day-to-day operations?

Mr. LENEY. Sir, I cannot give you a—

Mr. JOHNSON. It is subjective, right?

Mr. LENEY. It is—

Mr. JOHNSON. It is interpretative?

Mr. LENEY. It is inter—

Mr. JOHNSON. Mr. LENEY, I will submit to you that you—you made a statement earlier that this is a very real issue for veteran businesses. I am going to tell you that this is a very real issue for the VA because you just confirmed to Mr. Roe that this is a rule-

making issue. This is a decision that the VA is making. It is not legislative language. It is rulemaking.

And we have submitted to you already that there are disparities between the way the SBA handles this and defines this and the way the VA does, but you persist in denying that and say that they are the same. They are not. And I think we are going to get into that with our second panel.

I appreciate the testimony, Mr. Loney, but we clearly have a lot of work left to do. And with that, you are now excused.

Mr. LONEY. Thank you, sir.

Mr. JOHNSON. We will now call our second panel to the table. We will hear from Mr. Richard Hillman, Managing Director of Forensic Audits and Investigative Service at the Government Accountability Office; and Mr. Jim O'Neill, Assistant Inspector General for Investigations at the VA Office of Inspector General.

Both of your complete written statements will be made part of the hearing record.

Mr. Hillman, you are now recognized for five minutes, sir.

**STATEMENTS OF RICHARD J. HILLMAN, MANAGING DIRECTOR, FORENSIC AUDITS AND INVESTIGATIVE SERVICE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; JAMES J. O'NEILL, ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS**

**STATEMENT OF RICHARD J. HILLMAN**

Mr. HILLMAN. Chairmen Johnson and Stutzman, Ranking Member Donnelly, and Members of the Subcommittees, I am pleased to be here today to discuss our most recent assessment of fraud prevention controls within the Service-Disabled Veteran-Owned Small Business Program or the SDVOSB Program.

This program which is designed to honor disabled veterans' service by providing them with exclusive contracting opportunities has both a government-wide and VA component.

[Chart]

Mr. HILLMAN. As shown on the monitors, in fiscal year 2010, Federal agencies awarded \$10.8 billion in SDVOSB contracts according to the Small Business Administration. The Department of Veterans Affairs awarded \$3.2 billion or approximately 30 percent of government-wide awards. DoD and other Federal agencies awarded the remaining \$7.6 billion or about 70 percent of government-wide awards.

SBA administers the government-wide program which relies almost solely on firms self-certifying their status as an SDVOSB. In contract, VA is bound by law to verify firms' eligibility and oversees its own contracts.

Specifically the Veterans Benefits, Healthcare, and Information Technology Act of 2006 or the 2006 Act requires VA to maintain a database of SDVOSBs and VOSBs that were confirmed to be eligible to receive VA set-aside and sole-source contracts.

Because of weaknesses identified in VA's verification process and in response to the Veterans Small Business Verification Act or the

2010 Act, around 2011, VA implemented a more thorough verification process.

In prior work, we have reported on weaknesses in the fraud prevention controls in both the government-wide program and VA's program.

My testimony today discusses our recent assessment of fraud prevention controls instituted by VA as part of the SDVOSB Verification Program and summarizes the status of the government-wide SDVOSB Program.

Regarding our first objective, we have concluded that VA's program continues to remain vulnerable to fraud and abuse. While it has been proven difficult to determine an accurate and complete status of the program, according to the most recent information provided to us by VA, over 38 percent of the firms were listed in its verified database called VetBiz using the less rigorous process that VA chose to implement after the 2006 Act and have not verified under the more thorough process used in response to the 2010 Act.

Mr. Leney this morning said to you today and to us during the course of our work that all the firms in VetBiz are verified. But what he fails to acknowledge are the differences in the quality of the two verification processes used for the firms that are in VetBiz.

As shown on the monitors, the 2010 Act verification process implemented by VA is a more thorough process. It has more checkmarks showing that it includes unannounced and announced site visits and a review and analysis of company documentation to validate a firm's eligibility.

The presence of firms that have only been subjected to the less stringent process that VA previously used represents a serious vulnerability.

We have reported in 2009 and 2010 that this verification process allows ineligible firms to be wrongly certified. In 2011, VA's Office of Inspector General also reported on the basis of a random selection of 42 firms that 32 of the 42 firms listed in the VetBiz database or 76 percent were ineligible for the program.

The OIG further reported that the earlier verification process was insufficient to establish control and ownership of a firm which is a key requirement of the program and, in effect, allowed businesses to self-certify as SDVOSBs with little supporting documentation.

As a result, our most recent report includes a recommendation that VA take immediate steps to ensure that all firms within VetBiz have undergone the 2010 Act verification process. VA agreed in principle with this recommendation.

Also, in 2011, we issued 13 recommendations to VA related to vulnerabilities in the verification process implemented by VA after the 2010 Act.

I am pleased to report that as of June 2012, VA has provided us with documentation demonstrating that it has established procedures in response to six of these recommendations, although we have not assessed the effectiveness of any of the procedures that VA has established thus far.

For example, VA has established formal procedures for staff to refer suspicious applications to the OIG. It has also formalized a

process for conducting unannounced site visits to firms identified as high risk and has explored the feasibility of validating applicant information with third parties.

We are still looking for more progress to be made on seven recommendations including guidance for Debarment Committee decisions to debar firms that misrepresent their status as well as procedures on removing contracts from ineligible firms.

Regarding the government-wide SDVOSB program, no action has been taken by agencies to improve fraud prevention controls. Relying almost solely on firms' self-certification, the program continues to lack controls to prevent fraud and abuse.

While SBA is under no statutory obligation to create a verification process, five new cases of potentially ineligible firms discussed in our most recent report highlight the danger of taking no action. These firms received approximately \$190 million in SDVOSB contract obligations.

In one case, a firm found ineligible by VA continued to self-certify as an SDVOSB and received about \$860,000 from the General Services Administration and Department of Interior.

Further, the Department of Defense OIG reported in 2012 that DoD provided \$340 million to firms that potentially misstated their SDVOSB status.

To address these vulnerabilities, we previously suggested that Congress consider providing VA the authority necessary to expand its SDVOSB eligibility verification process government-wide. Such an action is supported by the fact that VA maintains the database identifying which individuals are service-disabled veterans and is consistent with VA's mission of service to veterans.

However, the problems we have identified with VA's verification process indicate that an expansion of VA's authority to address government-wide program problems should not be undertaken until VA demonstrates that it has a process that is successful in reducing its own vulnerabilities to fraud and abuse.

This completes my prepared statement. I would be pleased to answer any questions that you may have at the appropriate time.

[THE PREPARED STATEMENT OF RICHARD J. HILLMAN APPEARS IN THE APPENDIX]

Mr. JOHNSON. Thank you, Mr. Hillman.

Gentlemen, if we could beg your indulgence. Unfortunately, Mr. O'Neill, votes have been called. I think the best thing to do so we can get consistency in the hearing is to go ahead and recess at this point, go vote, and then let you do your five-minute statement after we return from votes.

So I anticipate about a half an hour or so delay, but we really have no choice here because votes have been called. So with that, we will stand in recess.

[Recess.]

Mr. JOHNSON. The hearing will now come to order.

I thank you for your indulgence while we went about the people's business.

Mr. Hillman, thank you for your testimony.

Mr. O'Neill, you are now recognized for five minutes.

**STATEMENT OF JAMES J. O'NEILL**

Mr. O'NEILL. Chairman Johnson, Members of the Subcommittees, thank you for the opportunity to discuss the OIG's investigative work in the SDVOSB Program.

In 2010, VA OIG decided to invest considerable resources in conducting criminal investigations of SDVOSB fraud despite being unable to identify a single felony conviction in Federal Court associated with this type of eligibility fraud.

We consider these crimes analogous to stolen valor cases and the true victims to be the deserving service-disabled veteran entrepreneurs who had earned the right to government contracts specifically set aside for them.

We realized then, as GAO has noted in several SDVOSB reports, that a program of aggressive investigations resulting in prosecution, debarment, or both is a critical component of preventing fraud.

Further, if this crime was to be deterred, there had to be meaningful consequences meted out to those whose greed led them to lie about their eligibility to participate in this program.

My counterparts at other Offices of Inspectors General, particularly SBA OIG, agreed to jointly investigate SDVOSB fraud whenever appropriate and to collaboratively convince Federal prosecutors that this fraud merits prosecution.

Since few of the SDVOSBs suspected of eligibility fraud failed to fulfill their government contracts, some assistant U.S. attorneys were reluctant to prosecute because the government did not seem to suffer a loss.

However, in addition to the persuasiveness of the stolen valor argument made by the investigating agents, I believe multiple congressional hearings as well as GAO and IG audit reports help convince prosecutors to pursue set-aside fraud more vigorously.

Additionally, on October 3rd, 2011, the Executive Office for United States Attorneys advised all Federal prosecutors that DoJ agreed with SBA that the Small Business Jobs Act of 2010 established a presumption of loss to the United States equal to the total amount expended on a contract whenever a concern seeks and receives a contract intended for small business concerns by misrepresentation.

This means that the SDVOSB defendant can be sentenced to forfeit all monies received from the government for a particular contract irrespective of whether the company fulfilled the terms of that contract.

In the 144 SDVOSB investigations VA OIG has opened to date, we have issued 419 subpoenas and executed 26 search warrants. Fourteen individuals and one company have been indicted and six of the individuals indicted have been already convicted.

We currently have 96 open SDVOSB investigations. The contract value of these open cases is \$908 million including \$159 million in ARRA funds.

We have completed our investigation in 20 of these cases and await a final decision by AUSA regarding criminal or civil prosecution.

Another 29 cases have earned prosecutive interest by DoJ but still require more investigation.

Consequently, I expect many others to be prosecuted. And if sentencing trends continue, defendants face a very unpleasant future.

As noted in detail on my written statement, Warren Parker's guilty plea will result in a \$6.8 million judgment against him in addition to any term of imprisonment he may receive upon sentencing.

Joseph Madlinger was sentenced to two years in prison and fined \$50,000.

Michael Woodling will forfeit more than \$1.5 million to the government.

Russell Todd, a former VA employee who conspired with Madlinger and Woodling, was sentenced to 15 months' imprisonment.

John Raymond White has spent the last 12 months in custody awaiting sentencing.

We hope that our vigorous criminal investigations deter this type of crime and help preserve the integrity of a program designed to benefit the service-disabled veteran entrepreneur.

Chairman Johnson, this concludes my statement. I welcome any questions you or other Members of the Subcommittees will have about our work in this area.

[THE PREPARED STATEMENT OF JAMES J. O'NEILL APPEARS IN THE APPENDIX]

Mr. JOHNSON. I thank you, gentlemen, for your testimony. We will now begin questioning.

Mr. O'Neill, would it benefit the VA to use the Small Business Administration's regulations defining ownership and control of a small business?

Mr. O'NEILL. I am not certain I am really qualified to answer, sir, in all honesty. We investigate fraud associated with the program and I have not devoted any attention or have any knowledge in depth about SBA regulations.

Mr. JOHNSON. In terms of the certification process?

Mr. O'NEILL. Yes.

Mr. JOHNSON. Okay.

Mr. O'NEILL. I think that listening to the discussion today, this control issue, I just want you to understand we are talking about absolute fabricated fraud here where—

Mr. JOHNSON. Okay.

Mr. O'NEILL. —overt acts were committed, where the veteran is no—

Mr. JOHNSON. I understand.

Mr. O'NEILL. —way in charge of the company.

Mr. JOHNSON. I understand.

Mr. Hillman, do you have an opinion on that?

Mr. HILLMAN. We have not specifically looked at this issue, but we are aware through our lawyers' most recent review that the differences between SBA's and VA's regulations are really very slight, very minor in nature.

For example, we understand that VA defines a service-disabled veteran as someone who possesses a service-connected rating disability of zero to 100 percent or a DoD disability determination

whereas SBA's definition of a service-disabled vet is a disability that is service-connected.

Differences in interpretation between those two definitions can cause problems in the extent to which veterans are knowledgeable of what it may take to qualify for a program.

An example of another small difference is that VA allows a surviving spouse to operate the business. In other words, the service-disabled veteran must pass away before the spouse is eligible to manage and control the business. SBA's provisions require a spouse or primary caregiver to be able to manage the business.

So due to these small differences in these regulations, it can cause major differences in whether or not a firm is eligible or not for the program.

Mr. JOHNSON. And do either of you have an opinion about what documents the VA should require for certification?

Mr. HILLMAN. Given the very specific requirements of the SDVOSB program having to determine ownership and control, and something that has not been mentioned today, having to determine whether or not the performance of the contract has been consistent with the regulations, requires VA to have a stringent certification process.

For example, an SDVOSB must manage at least 50 percent of the contract dollars if it is a service contract, and 15 percent of contract dollars if it has to do with contracting.

Given these very specific requirements, it is very important that you rely on more than publicly available information to assess a firm's eligibility. Reviewing an operating plan of a firm is very important. Reviewing contract performance information is very important. Conducting unannounced site visits is very important.

Although we are aware that documentation sometimes can be voluminous and that can discourage the service-disabled veteran from applying for the program, we are aware that VA is developing a document matrix to explain why documents are being asked for and their importance.

They are also developing a very good question and answer document which they are sharing widely which further explains the requirements of the program.

Hopefully through tools such as these, the eligibility requirements can become better understood.

Mr. JOHNSON. Mr. O'Neill, do you have an opinion on how often the VA should recertify business?

Mr. O'NEILL. No, sir, I really do not. We believe that when the fraud is egregious, it won't matter how long it takes, how often they are recertified. So we do not have an opinion on that.

Mr. JOHNSON. Okay. In your testimony, you talked about some of the legal results and prosecutions.

On average, how many hours does it take to produce results as you mentioned on a case?

Mr. O'NEILL. Well, as of the end of June, we had expended roughly 9,300 hours to conduct seven investigations that have gone to court so far.

Now, some of these will go to trial. That will mean many more hours of court. So on average, about 1,325 hours give or take.

Mr. JOHNSON. Okay.

Mr. O'NEILL. Excuse me, sir. I am sorry. That is only us. Many of our cases are joint investigations, so SBA is putting in time, FBI. That is just our hours.

Mr. JOHNSON. Have you seen any improvement in the tone of prosecutors towards pursuing these cases?

Mr. O'NEILL. Yes, sir. I think that for the variety of reasons I mentioned, there is a friendlier atmosphere to our presentations. There is more willingness to prosecute definitely over the last two years for sure.

Mr. JOHNSON. Okay. Thank you, gentlemen. My time has expired. We may do a second round.

But I will go to Mr. McNerney.

Mr. MCNERNEY. Thank you, Mr. Johnson.

I think our first panel showed the difficulty that we are facing in terms of coming up with a nonsubjective standard for awarding veteran status to businesses. The 100 percent control clearly raised a lot of question within the Committee. But the fraud issue is another part of this that we have not really talked about too much.

Mr. Leney was saying that only five percent of applicants tend to be fraud. But my fear, and I think that is something that you are showing in prior testimony, is that that five percent can end up awarding a lot of contracts to people that are undeserving and should be prosecuted.

How much of a problem do you think fraud is in the overall program, Mr. Hillman?

Mr. HILLMAN. The work that we have done looking at individual case studies is not something that we can extrapolate to the universe as a whole to give you a percentage of fraud that we think may exist within the program.

The closest example of that would be a study done by VA's OIG who in 2011 did a study that was a statistically valid random sample projecting the extent to which there may be fraud within the program.

What they found as part of their study was that in a review of 42 firms, 32 of the 42 or 76 percent of those firms were not eligible for the program.

However, during the study's assessment period, VA was using the less rigorous process under the 2006 Act as well as just a plain self-certification process that was implemented before the 2006 Act.

And, if you look at only those firms that were included as part of the 2006 verification process, you see a similar percentage. About 10 of 14 firms that were included in the VA OIG's sample were found not to be eligible or 70 percent of those programs, a very comparable percentage.

Mr. MCNERNEY. Well, do you think this 100 percent control standard is contributing to fraud? Is that a standard that is difficult to verify in some way? Is there some way we can improve that standard in order to reduce the appeal of fraud to, you know, unscrupulous players?

Mr. HILLMAN. Like Jim has said, in the cases that we have examined as part of our work, there has been very little ambiguity as it relates to an ownership or control issue when we have gone out and conducted our own investigations.

For example, ownership of a business is determined by reviewing the business's operating agreement and operating plans. And you can document the extent to which on paper an individual is an owner of the business or not.

Control on the other hand is a much more subjective determination. For example, conversations this morning suggested that if a service-disabled veteran-owned 51 percent of a company, and the veteran decided to sell that company, then the veteran both owned and controlled the company.

However, there could be wording in the operating plan or other agreements of that firm that if the principal decides to sell that business, there is a requirement that the principal consult with the minority owners first to get their agreement.

That would be an example where there was maybe 51 percent ownership, but because of an operating agreement, not a hundred percent control. So—

Mr. MCNERNEY. That is informative. That is informative because then ownership is subjective, it is easy to establish, it means something, everybody can understand it. And if people are committing fraud, then they can be prosecuted whereas control is a much more subjective standard that we are having to try and manage.

Mr. HILLMAN. In our cases that we have investigated, we have found instances where individuals may be living and working in other businesses that are 500 miles away from the SDVOSB. We have seen instances where the service-disabled veteran may be receiving a salary of \$12,000 where a minority owner may be receiving a salary of \$80,000.

Examples like these suggest that while on paper, ownership exists, the veteran is not controlling the business. In those instances, we provided our case results to the enforcement organizations and they adjudicate over those issues.

Mr. MCNERNEY. So ownership has its own risks then with regard to somebody just using a veteran on paper and maybe skimming off some of the profits but not having control. Okay. So this is still a difficult issue for us.

Mr. HILLMAN. And in addition to ownership issues, there are also issues that you just referred to as a "pass through" where you have a service-disabled veteran as the owner of the business, but that service-disabled veteran may pass that contract through to an entity that is run by non-veterans or non-service-disabled veterans to manage that activity.

And in accordance with the provisions of the program, if the veteran owner does not handle 50 percent of that service contract or up to 15 percent of a contractor-related contract, then the veteran is not fulfilling the provisions of the program as well.

So the details dictate whether or not the service-disabled veteran is eligible for the program and I think that is a source of confusion and something that the program has attempted to clarify.

Mr. MCNERNEY. Thank you.

I yield back.

Mr. JOHNSON. I thank the gentleman for yielding back.

We will go to Mr. Stutzman.

Mr. STUTZMAN. Thank you, Mr. Chairman.

Mr. O'Neill, in your testimony, all of the cases you cite involve companies that self-certified their status as veteran-owned and controlled.

CVE has now installed a more rigorous verification program to determine whether a company is truly veteran-owned and controlled.

Can you tell us how many of your cases open or closed involve companies certified under the more rigorous process and whether that process is meeting the goals of eliminating most of the cheaters?

Mr. O'NEILL. No, I cannot tell you here. I can give you a written response. I would have to do some research.

But I know of one instance, for example, where the company had been certified under more rigorous standards, but it was at the beginning of the process and mistakes were made in CVE.

And do not forget. We can execute search warrants. We can get e-mail. We can uncover evidence of fraud that even the most rigorous standards applied by CVE won't find.

So it is going to happen. I think it is certainly far fewer of our cases, and I do not think the number will exceed ten. I will be surprised if it does, because companies are passing that level of scrutiny by CVE.

But I will respond to you in writing.

Mr. STUTZMAN. Okay. Thank you.

Mr. Hillman, looking at just the highlights, you start off the first paragraph saying that the SDVOSB Program remains vulnerable to fraud and abuse and you mentioned that several times.

And even with your recommendations at the conclusion of the one paragraph, you say GAO made some changes to the report that you had made after the Veteran Affairs, after they had challenged some of them or you guys discussed them. But you continue to believe that the program remains vulnerable to fraud and abuse.

Do you feel that the VA is concerned about this particular program? What kind of response do you get from them when you discuss your concerns about fraud and abuse? Is it as much of a concern to them as it is a concern to you?

Mr. HILLMAN. When you are reviewing organizations such as the Veterans Administration or perhaps maybe even the Small Business Administration, these entities have largely a roll of advocacy and service to their constituent groups, either veterans or small businesses.

The OSDBU function which Mr. Leney operates is also more of a service-oriented function. The idea of having a strong controlled environment to help deter or detect fraud and abuse is not necessarily part of their DNA.

So when we are going in and evaluating the extent to which a program has strong prevention controls or detection and monitoring controls or controls to ensure that the program is taking aggressive actions against bad actors, we are evaluating the extent to which the program is vulnerable to fraud and abuse.

I believe Mr. Leney's organization is attempting to develop a greater awareness of the potential for fraud and abuse through additional training, through additional guidance, but it really has not existed to the same degree as we would hope that it might to date.

Mr. STUTZMAN. Why do you think that is?

Mr. HILLMAN. I believe it has an awful lot to do with the organization's mission as an advocate for those constituent groups, in this case the veterans. The interest in ensuring that there is strong oversight and protection over the fraud, waste, and abuse angle is not something that is really what they see as their primary function.

Mr. STUTZMAN. What is your opinion of the VA's process for debaring companies? Have they set the thresholds high enough? Are more companies getting denied verification that should be also considered for debarment? What is your opinion?

Mr. HILLMAN. The statistics that we have seen show that over time, the Debarment Committee within VA is making more debarment decisions and has more proposed debarment decisions than they have had in the past.

As of July 26, 2012, there were 11 SDVOSB cases that had been tried by this Debarment Committee, including five debarments and six proposed debarments. And these debarments when they occur, last for up to a four to five-year period of time. They are taking aggressive action in that regard.

However, you use numbers such as five debarments, six proposed, and you are seeing many more being provided to them for their review.

The Committee itself was established in September 2010, almost two years of activity. I do believe that is sufficient time for someone to go in and take an evaluation of how well that Committee has been functioning over that two-year period and what additional steps could possibly be taken.

Mr. STUTZMAN. Okay. One last question. Do you think that self-certification was a mistake? Does it open the door for more fraud and abuse?

Mr. HILLMAN. Absolutely. The government-wide program which manages 70 percent of all SDVOSB contracts is largely a self-certification program and it is very susceptible to fraud and abuse.

The VA is the only agency that has a verification process for its service-disabled veteran-owned small businesses and that has reduced the vulnerability of fraud.

We are hoping that Mr. Leney will continue to make additional improvements to make that level of fraud as low as possible commensurate with the cost of establishing controls.

And we are very concerned about the government-wide program being a self-certified program and that it is not serving veterans well.

Mr. STUTZMAN. Thank you.

I will yield back, Mr. Chairman.

Mr. JOHNSON. We will go into a second round of questions.

Mr. Hillman, in your most recent report, you detailed and talked about five new case studies that received SDVOSB contracts despite evidence that they are ineligible for the SDVOSB Program.

Do you know if any of these were at one point recently certified or verified by the VA?

Mr. HILLMAN. We do have some information on that. Two cases are included in the five that we looked at where VA's more rigorous

verification process ultimately denied them application into the program.

There was another example where a third case study upon request from VA for additional documentation consistent with the 2010 process questions arose. The owner then withdrew from the program.

Mr. JOHNSON. Let me be clear.

Mr. HILLMAN. Sure.

Mr. JOHNSON. In your study, I thought you detailed five new case studies that had received SDVOSB contracts—

Mr. HILLMAN. That is correct.

Mr. JOHNSON. —despite that they are ineligible. Are these the ones that we are talking about? I mean, they received contracts, so they were awarded contracts in spite of—they were not denied eligibility.

Mr. HILLMAN. Well—

Mr. JOHNSON. They received contracts. You guys found them, correct?

Mr. HILLMAN. Yes, Chairman. At the time that we began our investigations, those contractors had received SDVOSB contracts. Some were verified through the VA's process. Some were self-certified as part of the SBA process.

Mr. JOHNSON. Were any of those five recently verified under the new rigorous program?

Mr. HILLMAN. That is what, I was not speaking as clearly as I could have. As we progressed in our review, what we later learned is that two of the firms that were included amongst the five that we looked at had then begun to go through the 2010 process and were rejected.

Mr. JOHNSON. Subsequently rejected?

Mr. HILLMAN. Correct.

Mr. JOHNSON. After they had—

Mr. HILLMAN. That is correct.

Mr. JOHNSON. —been awarded contract?

Mr. HILLMAN. So that is evidence to us that the 2010 process is a process that can work. It is a process that can keep out ineligible firms.

Mr. JOHNSON. Were those firms once they were identified, were those contracts terminated, rejected, canceled?

Mr. HILLMAN. I do not have information on the specifics on those five, but experience has shown us that firms are often allowed to continue to complete those contracts.

Mr. JOHNSON. Wait a minute.

Mr. HILLMAN. But I can provide specifics for the two firms in our study. I do not have that information in front of me now.

Mr. JOHNSON. Yes, would you, please. And let me clarify and make sure I understood what you said.

That in your experience—

Mr. HILLMAN. In my experience, in the contracts that we have looked at in the past, firms have been allowed to complete those contracts.

Mr. JOHNSON. Even though they had been found—

Mr. HILLMAN. Even though they had been found to be—

Mr. JOHNSON. Ineligible?

Mr. HILLMAN. —ineligible.

Mr. JOHNSON. Wow. Okay.

Mr. HILLMAN. Due to either timeliness associated with completing that contract or exigencies in how that contract process evolved.

Mr. JOHNSON. Okay. All right. Thank you.

When did you first become aware that a number of firms still verified in VetBiz had not been verified under the more thorough process?

Mr. HILLMAN. We have been under the impression from testimony that was provided by VA back in the fall that all of the firms within their program had now been verified.

As was mentioned earlier this morning's, we were under the impression that VA was confirming that all firms in the program had been verified under the 2010 Act or the more rigorous process.

So as part of doing our case studies, Chairman, we identified firms that should have received the more rigorous verification process but did not. We found cases that had not being verified under the more rigorous process and later found out that over 2,000 firms, 2,355 firms were included in VetBiz that were verified under the less rigorous process.

That less rigorous process is a source of concern to us and we are hopeful that VA can expeditiously ensure that all firms in its VetBiz system have received the more rigorous review.

Mr. JOHNSON. Clearly given your testimony, we see the benefit of that more rigorous process as well.

In your report, you mentioned that the VA had provided seven differing accounts of the numbers of SDVOSBs verified under the process of the 2006 Act and 2010 Act, the number of SDVOSBs they plan to remove and the timing of the removals.

Can you give us some examples of the differing accounts that the VA provided during your review?

Mr. HILLMAN. I have a couple of pages of examples that demonstrate conflicting statements made by VA that I would be happy to submit for the record.

Mr. JOHNSON. Okay. If you would do that, I would appreciate it.

And one final question, then we will move on to my colleagues.

In your analysis or your analysis shows that as of April 1st, 2012, 60 percent of the firms listed as eligible in VetBiz had yet to be verified using this more thorough process. We just talked about that. And 134 of these firms received a total of \$90 million in new VA SDVOSB contracts during a four-month period.

So do you still feel that there is a vulnerability here until all of the firms have been verified under the new process?

Mr. HILLMAN. Yes, Mr. Chairman. The results of VA's OIG study which found that 70 percent of the firms verified under the less rigorous process were found to be ineligible for the program causes us significant pause and we believe that VA needs to immediately ensure that the more rigorous process is being followed for all firms within VetBiz.

Mr. JOHNSON. And given the fact that we are talking about tens of millions, in this case a total of \$90 million in new contracts during a four-month period, there are millions of dollars of taxpayer dollars at risk here of going to companies that are ineligible, there-

by diminishing the amount of contract awards that should be going to eligible veteran companies.

Would you agree with that?

Mr. HILLMAN. The VA study through its work determined that for a one-year period of time, there were potentially \$500 million going to ineligible firms. And if actions were not taken to address that problem over a five-year period of time, \$2.5 billion would be provided to ineligible firms.

Mr. JOHNSON. And given the fact that, according to your statements a few minutes ago, that previous experience is that oftentimes even after they are found ineligible they are allowed to complete those contracts, we are talking about millions, hundreds of millions of dollars of taxpayer dollars going to ineligible firms that walk away scot-free, correct?

Mr. HILLMAN. It seems that is so.

Mr. JOHNSON. Yes, sir. Thank you.

I yield now to Mr. McNerney.

Mr. MCNERNEY. That was pretty sobering, Mr. Chairman.

Mr. O'Neill, you cited several cases that are being prosecuted effectively.

Do you have any evidence to show that those cases are forming some sort of a deterrent to potential bad actors or do you have any evidence whatsoever that we are being effective in that effort?

Mr. O'NEILL. Well, after the conviction of John White, during our investigation of another company, we found an e-mail where they were talking about how they are going to have to be more careful. I do not know if that is effective deterrent, but it clearly was in their consciousness.

We are doing all we can to publicize the ramifications of this type of fraud, so hopefully it will have more and more deterrent as you see more and more defendants in the next six months to a year. But beyond that, I do not have empirical evidence.

Mr. MCNERNEY. Well, what fraction or what portion of the fraudulent cases do you think you are prosecuting? Is there any way to estimate that? I know it is an open-ended question.

Mr. O'NEILL. No, we do not know what we do not know to be perfectly frank. But certainly we are seeing traction with prosecutors.

In the very beginning, there was more of a tendency to decline prosecution because of the theory that there was no loss to the government. That has changed. And we have more in the hopper now that I believe, again, will be successfully prosecuted either criminally or civilly. And we are more aggressive about debarments as another tool we can use to try to deter this type of crime.

Mr. MCNERNEY. Is there any authority that Congress can give you that would make your office more effective in identifying fraud cases and prosecuting?

Mr. O'NEILL. Not at this time. I mean, to be honest, it has been more of an issue of convincing prosecutors to accept our cases which they are now doing.

And the laws that exist that we use, whether it is major crimes against the government or false statements or wire fraud or whatever, they seem adequate to do the job if there is a willingness to prosecute.

In terms of detecting, we are going more proactively into databases that have become available to us and hopefully that will yield some more results. Beyond that, I am not prepared to ask for anything in particular.

Mr. MCNERNEY. So do your prosecutions usually end up targeting veterans?

Mr. O'NEILL. No. Actually, so far, out of the 14 individuals who have been arrested, I believe only one was purporting to be the SDVOSB, service-disabled veteran.

Now, some of our other defendants were veterans, but they were not service-disabled and many, the majority, I suspect, were not veterans at all.

So, no, most of the people so far have not been the person propped up to pretend to be in charge of the particular company.

Mr. MCNERNEY. Thank you, Mr. Chairman. I am going to yield back.

Mr. JOHNSON. Mr. Stutzman.

Mr. STUTZMAN. Thank you, Mr. Chairman.

Mr. Hillman, in reading through your highlighted report, a question I have is, of these 3,717 firms, 134 received \$90 million in new VA SDVOSB set-aside or sole-source contract obligations from November 2011 to April 2012.

Do we know, did all 134 of those go through the more rigorous certification?

Mr. HILLMAN. No. The point that we are making there is that all of those firms went through the less rigorous process.

Mr. STUTZMAN. And the 134 that received \$90 million in contracts—

Mr. HILLMAN. Yes.

Mr. STUTZMAN. —went through the less rigorous certification?

Mr. HILLMAN. Correct.

Mr. STUTZMAN. Because prior to this, you say that VA has made inconsistent statements about its progress verifying firms listed in VetBiz.

Can you elaborate on that, the inconsistent statements?

Mr. HILLMAN. Yes, I would be happy to do that.

We, as I mentioned, have a couple of pages of statements which we would be happy to submit for the record. But conflicting statements that VA has made cause us concern about whether VA actually knows how many firms have been verified under the more thorough 2010 process.

For example, in one instance, we were told by VA that their new process for verifying firms began in February 2011. However, while we were reviewing our case studies, we later learned that there were cases that we were looking at that were still confirmed under the old process well after the timeframe that we were told the new process was in place.

Later, in April 2012, we learned that VA had removed thousands of firms because they had not supplied the supporting documentation required under the more rigorous process.

Over the next month, VA officials provided us with at least seven differing accounts of the number of SDVOSBs verified under its process for the 2006 Act and the 2010 Act, the number of the

SDVOSBs they planned to remove, and the timing of those removals.

These conflicting statements create uncertainties about the status of the agency's efforts to verify firms under the more rigorous process.

Mr. STUTZMAN. So would you say that given the presence of a significant number of firms in the VIP database that have only been verified using the Lite process, is it time to stop verification of new applicants until CVE has completed at least the initial decision on all of the remaining Lite firms under the more thorough process?

Mr. HILLMAN. I do not believe I would be in favor of necessarily stopping the process to verify those done under the Lite process, but I would like to see a greater level of attention afforded to ensuring firms are verified using the more rigorous process.

And, in fact, that may actually be occurring with the new interim rule that VA put in effect where there is now a two-year reverification process. That may indeed allow VA to focus on those that had been verified two years back mostly being under the less rigorous process, paying greater attention to those first than those that have been done potentially over a two-year period under the more rigorous process.

But we continue to remain concerned that with such a large percentage of firms included in the program under that less rigorous process that veterans are not being served well.

Mr. STUTZMAN. Mr. Chairman, I just have a lot of concerns here. And with the testimony and the answers that Mr. Hillman has given, as a taxpayer, as a business owner, as an American watching this sort of or hearing about this sort of testimony, my confidence is really shaken.

And what is going on and are we making sure that veterans are really being served through this particular program?

So I will just say thank you for being here and thank you for your testimony and answers.

With that, I will yield back.

Mr. JOHNSON. Thank you, Mr. Chairman, for yielding.

And, gentlemen, that concludes our questions. We could probably spend all day and drill down into this thing, but I think we have got a pretty accurate picture that we have got a lot of work left here yet to do.

I appreciate your testimony and with that, you are excused. Our thanks to the panel.

I would now call our third panel to the table. On our third panel, we will hear from Mr. Rick Weidman, Executive Director for Policy & Government Affairs at Vietnam Veterans of America and current Chairman of VET-Force; and from Mr. Scott Denniston, Executive Director at the National Veteran Small Business Coalition.

Both of your complete written statements will be made part of the hearing record.

Mr. Weidman, you are now recognized for five minutes.

**STATEMENTS OF RICHARD F. WEIDMAN, EXECUTIVE DIRECTOR, POLICY & GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA; SCOTT DENNISTON, EXECUTIVE DIRECTOR, NATIONAL VETERAN SMALL BUSINESS COALITION**

**STATEMENT OF RICHARD F. WEIDMAN**

Mr. WEIDMAN. Thank you, Mr. Chairman, and thank both Mr. Chairmen and Members.

I think it might be useful at this point just to go back and set some context to all the discussion today which drilled down then of necessity to a lot of specific details.

106S50 when it was originally passed, we decided to stay together the task force that worked with the leadership of this Committee, at that time Mr. Stump, and with Jim Tallon of Missouri to get that legislation through. And it was all that time spent since then mostly is focused on getting the agencies to implement it successfully.

Several years ago, we became very concerned about fraud, about rent-a-vets coming into the situation. And it was us who approached the Committee to ask for assistance to weed out these folks when a friend of mine said you should know better than calling people in who then will say we are from the Federal Government and we are here to help you.

And, unfortunately, a lot of our businesses have literally been destroyed and very few, relatively few people have been caught who are the real crooks. They are still out there operating. They may not be operating in VA, but they are operating in other agencies because of a lack of due diligence.

So we have a number of suggestions here this morning that perhaps have the way forward, but let me just say that one of the things that would help significantly is for this Committee to communicate to the Authorizing and Appropriation Subcommittees about the problems with those other agencies, whether it be the Department of Interior or whoever it might be, where it is clear that staff, procurement staff is not doing due diligence on this program or other programs probably. And, therefore, there are people who are getting in on self-certification who really are ineligible for the program.

There are number of things in the short-run that we would suggest that need to be done. First is provide transparency to the OGC opinions because we have not had those to look at to understand why and how people came.

Let me just say as a general note as we have noted to Mr. Leney and noted to your colleagues over on the Oversight and Investigations Committee of the House of Representatives that if you are teacher and 60 percent of your students flunk the test, you have a real bad test or you are a real bad teacher or both. And that is a failing school.

So we argue that it has not been clear heretofore what are these criteria, one.

Two, that some of the criteria just make no sense, the ownership thing as an example. If I own a hundred percent of the business and I do not have a board of directors, I am a sole proprietorship, then they would declare, okay, you have got control.

But to think that I can make a decision without consulting with my spouse about what supports the family is ludicrous on the face of it. Maybe your family works different, Mr. Chairman, but that is the way it works in, I believe, most—

Mr. JOHNSON. I assure you, Mr. Weidman, it is much more complex than that at my home.

Mr. WEIDMAN. But consultation must be made, I am sure.

And so the notion of ownership and in the way in which VA is doing it is not in statute. It makes no sense operationally and it is not weeding out the real crooks.

What is the purpose of this whole thing? Is it to see how many angels can dance on the head of a pin of minute things laid down, or is it to weed out people who are not eligible for the program?

I would suggest that it is the larger issue that we need to focus on.

Secretary Shinseki often says do not worry about doing all things right. Worry about doing the right thing for the veteran. This is what he has told to all the adjudicators within the compensation and pension section. In other words, do not worry about crossing all the T's and dotting the I's and regulation that may not really pertain.

The key question that was asked here this morning was when one of the Members of this panel asked Mr. Leney who wrote the regulations. They wrote the regulations.

When the GI Bill was first implemented, they had 17 different steps and it turned into a real mess getting the money out to the young people coming home to go to school.

And Secretary Shinseki called the 57 people from the regional offices in and said why is this taking so long. Walk me through what happens when a young person sends in an application for the 21st century GI Bill. And they did and it was 17 steps.

And he asked, well, why do you go through all these steps. And they said, well, the regulations require it. Well, who wrote the regulations. Well, we did. And they reduced it to three steps, three steps.

And you have not heard any problems with fraud there because it focused back on the real question which is, are people eligible or are they not, are they legitimate or are they not, and did not get into the kinds of details.

I am out of time, I can see, Mr. Chairman, and I apologize for going over. I did not get into the specific recommendations, but hopefully we can get into those in the question period.

I thank you, all of you very much on both Subcommittees for your leadership on this issue and doggedly pursuing trying to get this straightened out.

[THE PREPARED STATEMENT OF RICHARD F. WEIDMAN APPEARS IN THE APPENDIX]

Mr. JOHNSON. Thank you, Mr. Weidman.

Mr. Denniston, you are now recognized for five minutes.

#### STATEMENT OF SCOTT DENNISTON

Mr. DENNISTON. Chairman Johnson, thank you, Chairman Stutzman, thank you for holding this hearing.

I am fighting a cold, lost my voice last night, so we will do the best we can.

The National Veteran Small Business Coalition was established two years ago to be the honest broker middleman between the veteran business community, Federal agencies, and prime contractors.

And we have been imminently involved with this whole verification process since the very beginning and also because Mr. Leney as part of his improvements for the program asked the coalition if we would be involved and be one of his partners to help veterans and have veterans understand what are the issues with verification.

So we have got a fairly good background as to what some of the issues are. And I would like to in the short time that we have address what we believe to be those issues.

First, the greatest weakness we believe is the lack of communication between a veteran and the CVE. When an application is submitted, it basically goes into a black hole. You heard from Mr. Leney that a reconsideration takes 200 days. There has got to be a way to communicate.

We have got a veteran that drove up from South Carolina because he tried the VA help desk and was told that he was caller number 30 and his approximate wait time was 4,116 minutes. He said he could fly up here faster than that.

The second area of weakness we see in the CVE verification process is the restrictive rules as a result of Public Law 111-275. Some of the issues that we see that are absolutely critical here with the rules being too restrictive.

And I know that Mr. Leney said that the rules are the same for the SBA programs and also for the service-disabled vet programs. We have many veterans that come to us that have been denied CVE verification but yet are 8A contractors.

So the question then becomes how are the rules the same? Then it must be in the interpretation.

We also are concerned about what we see as CVE's focus on events that may happen in the future, things like vets that are in community property states who may go through a divorce, rights of first refusal which are very standard in most business contracts which, again, that is something that is going to happen in the future. But if there is a right of first refusal clause in the bylaws, the articles of incorporation, the agreement between two partners, that is going to reject you for CVE verification.

I mean, realistically no non-veteran investor in his right mind is going to invest in a service-disabled veteran-owned business the way the rules are written now.

We also have a difference between the ownership and control issues that were mentioned, the gentleman from GAO talking about contract performance, and it is important that we do not get those confused in my opinion.

The next issue we have with the VA is the inconsistent interpretation of the rules. And this becomes very critical when CVE is looking at the past experience of a veteran versus a non-veteran because many times the non-veteran is going to have more years of experience in the given industry than the veteran is because the veteran has been serving their country.

And, again, there is no hard and fast rule as to what constitutes acceptable experience. That is a very subjective decision that we think is being unfair to folks in the veterans' community.

The other problem that we see is CVE staff not understanding basic business principles, what questions to ask, and how to ask the questions.

Many times, the VA staff from what we are learning are confusing operating agreements which are LLCs with articles of incorporation and bylaws. And CVE staff does not appear to understand the functions and duties of officers versus directors of small businesses and how they relate to operation and control of the business.

So many times CVE is asking for documentation that we do not believe is relevant to the control issue.

So in our testimony, we have come up with eight specific suggestions that we think would help the CVE verification process.

One is an in-depth development of standard operating procedures.

Number two is open lines of communication with the veteran applicants through e-mails and phone calls.

Number three, assign a caseworker to every application and inform the veteran who it is that is processing their case so they know who they need to talk to.

Establish a management review board which would be people internal to VA that before anyone is denied or before there is a request for additional information, that review board would make sure that the reviewer knew what they were talking about before they took the action.

Number five, provide veteran applicants an opportunity to take corrective action before issuing a denial letter.

Number six, at the recent veteran business conference in Detroit, Secretary Shinseki announced a Committee to review and determine how the verification rules could be improved. We would like to see veteran business owners and stakeholders as part of that process.

We think that it would be important for VA to establish a business advisory Committee to review processes, procedures, rules, policies and their implementation as it relates to the Veterans First Program.

And, number eight, and probably most important, institute a grace period whereby firms who have been previously verified as veteran-owned or service-disabled veteran-owned remain verified until such time as CVE has an opportunity to perform the new in-depth review when the contractors are pending contract opportunities which they will lose if CVE pulls their CVE verification.

With that, as Rick did, I went over my time. I apologize, and be happy to answer any questions.

[THE PREPARED STATEMENT OF SCOTT DENNISTON APPEARS IN THE APPENDIX]

Mr. JOHNSON. Thank you, gentlemen, for your testimony.

We will now begin with questions.

For both of you, either of you, how effective, and if you could answer quickly so we can get to everyone here, how effective do you think the Verification Assistance Partnering Program is in the VA?

Mr. DENNISTON. I think it is too early to tell. I think it has the foundations to be effective because we are bringing in people being trained by VA who understand the process and then can go out and help train veterans. And I think that will go a long way to some of the issues that we faced in the past.

Mr. JOHNSON. Okay. Mr. Weidman.

Mr. WEIDMAN. We need to simplify the process first and then I think it can help a great deal. It is simplification and clarification in the process so that we can understand it so that we can help veterans understand it and put together self-help guides that are clear as a bell about what you need to do in order to get VA certification.

And the litmus test of that simplification should be what do you need in order to make sure that you do not have fraud here. And some of the dancing on the head of a pin definitions that go into that decision now really make no sense operationally. It does not accomplish the purpose. And we keep pointing out that 59 people caught versus thousands literally rejected who are legitimate makes no sense at all. We need to clean up this process.

Mr. JOHNSON. Okay. How is the self-assessment tool being used by verification assistance counselors and how has it been received by the partners and individual vets?

Mr. DENNISTON. Quite frankly, we are not using it because we do not believe it is effective. We think that we can have better success working with a veteran one on one because the self-assessment tool was written from a VA perspective, not from a business owner's perspective.

Mr. JOHNSON. Okay.

Mr. WEIDMAN. What Scott said before about consulting with the stakeholders and business owners before you produce curricula, that is a sea change that really has to happen throughout VA and it certainly has to happen in this instance of sitting down with us before you put together things like that self-assessment tool so we can offer input which, in fact, may be helpful to make it a better product.

Mr. JOHNSON. I thank you for your answers.

Mr. McNERNEY.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Both the witnesses mentioned that you have specific recommendations to improve the process.

Has the VA been receptive to your ideas and do you feel like any of these will be implemented in the regulatory development?

Mr. DENNISTON. One of the primary reasons that we agreed the coalition to become a partner with VA was, number one and foremost, to help veterans through this very onerous process.

But the second was because we do have the commitment from VA that as we go down the line, we will have an opportunity to discuss where the rules are onerous, how we can improve and be more effective in the process.

So in answer to your question, that was the basic reason that we agreed to be a partner.

Mr. WEIDMAN. The same is true of VET-Force and I think of the other organizations who are participating in that. As it becomes more clear, I think that what the process is and that the process make sense, I think you are going to have more people step forward and agree to essentially act as mentors for people who want to apply.

Mr. MCNERNEY. Would you like to enumerate your suggestions, Mr. Weidman?

Mr. WEIDMAN. Well, one suggestion is that we have or recommendation really is to move the CVE and to create a separate verification unit.

CVE three years ago was a place where you went for help. It was a good place. Now business owners consider it the enemy. And people do not get their e-mails returned or answered. They do not get their phone calls returned, et cetera.

What we are suggesting is to remember that this is a veteran's benefit. It is based on the notion of the 19th century notion of bounty legally and the same as veterans' preference is to give preference in doing selling goods and services to the Federal Government. And that is its core.

So, therefore, we are suggesting that you move it to and take the steps necessary to create that fourth division of VA which focuses on helping veterans become more independent and self-sustaining.

And that would entail the Veterans' Employment and Training Service, bring it over from Labor. It would include the Education Service. It would include the Voc Rehab and it would include CVE which then would have to cooperate closely with SBA so that it magnified the services, and to have the verification unit there as well.

Secretary Shinseki and the Under Secretary in Veterans Benefits have adjudicators for the first time doing something that veterans cannot believe, that when they are adjudicating the claim and they are looking over the claim, they pick up the phone and call the veteran.

And veterans are astonished and say, look, what we need in order to do this, did you mean X, Y, and Z. And the veteran says, no, I meant A, B, and C. And he says, okay, well, we need to change that and you need this supportive document, do you understand what I am talk—to actually communicate with the veteran.

And in the end, it saves money because it stops the churn within the system. This is a brand new system and we have a churn that does not quit. We need to get it right the first time and the way to get it right the first time is for the legitimate businesses, which is 99 percent of all of them who apply, to help them get it right to get it through so we can get on with it.

And so that is the primary suggestion that we have, sir.

Mr. MCNERNEY. That is a big one.

You know, when you send a package out in FedEx or UPS or even USPS, you know, you can go online and you can see that it has gone to Memphis and it has gone to Oakland and it is going to come to you.

Maybe something like that would be reasonable within the VA when you make an application not only for this but also for disability benefits to know where your application is and maybe have

sort of a scheduled time when you can expect a call from the VA to discuss questions.

Mr. WEIDMAN. Assuming you can believe the IT folks, we are less than a year away from having that kind of a dashboard in the Compensation and Pension Program where you can track where your claim is in the system. And once it works in that, there is no reason why that same software can't be used by the verification folks.

And we believe that there is software already existing. It is just they need to give Tom Leney the ability to purchase it.

This is one of the things that troubles us also, by the way, and I won't get into a long discussion of the supply fund which we are very much against because of accountability issues.

But I will say this is that the function of small business verification, because it is a veteran's benefit, should be a line item. It should be in Title 38 and it should be subject to the normal appropriations process.

Mr. MCNERNEY. Thank you.

Mr. Chairman, I am going to yield back.

Mr. JOHNSON. I thank the gentleman for yielding.

We have spent a lot of time here today.

I have got one clarification for you, Mr. Weidman. Could you clarify your suggestion that sounded a little bit to me to sound as though you were suggesting self-certification?

Mr. WEIDMAN. No. What we are suggesting is self-certification for people who do not intend to do business with the VA. And so it would be a slightly less rigorous step until they catch up. I mean, they tightened up so far, and some of it is not needed in our view, but you need to catch up with this process.

I have talked to folks who are doing on both the RNC and the DNC within the past week and when they go out and do town meetings, every place they go the anger explodes about this issue of verification process. And it cuts right across every other issue because as it is viewed from the outside, it is the apotheosis of bureaucracy running amuck.

I want to say just something personally and on behalf of VVA and of VET-Force is, we are not demonizing Tom Leney or his staff. We believe they are taking orders from above because the emphasis has been on the relatively few frauds instead of how many people are verified and doing business.

And we will continue. I have already invited Mr. O'Neill and Mr. Hillman to join us August 21st at the next VET-Force meeting so we can get their perspective and we can tell them what we think is important about what they should be looking at in order to improve the overall process.

So it is that kind of communication that has been lacking, sir. And, frankly, the chief of staff, Tom Leney is doing exactly what the chief of staff told him to do. And so that is where if there is any problem or mind shift that needs—mind set that needs shifting, that is where it is.

Mr. JOHNSON. Okay. Thank you, Mr. Weidman.

Well, the CVE has now been notified by both the judicial branch and the legislative branch that its processes need to be improved. This combined with the GAO's most recent report and the firsthand

stories this Committee hears from veteran-owned small businesses tells us that all is not as well as the VA's testimony claims.

We urge you, Mr. Leney, to thoroughly appraise your operation and work with this Committee to overcome the CVE's inadequacies.

This Committee will remain vigilant in monitoring the CVE's progress. Investigative elements of our Committee will continue to conduct oversight, pursue bad actors, and refer them for investigation and potentially criminal prosecution.

With that, I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and include extraneous material. Without objection, so ordered.

I want to thank all Members and witnesses for their participation in today's hearing.

This hearing is now adjourned.

[THE PREPARED STATEMENT OF JAMES F. McDONNELL APPEARS IN THE APPENDIX]

[Whereupon, at 12:51 p.m., the Subcommittees were adjourned.]

## A P P E N D I X

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### **Prepared Statement of Hon. Bill Johnson, Chairman, Subcommittee on Oversight and Investigations**

Good morning. This hearing will come to order.

I want to welcome everyone to today's joint hearing on the Center for Veterans Enterprise. I thank the Members of the Subcommittee on Economic Opportunity for their participation today and their efforts in improving the process for veteran-owned and service-disabled veteran-owned small businesses to conduct business with the VA.

The two Subcommittees have worked throughout this Congress to improve the certification process for veteran-owned and service-disabled veteran-owned small businesses, or VOSBs and SDVOSBs. We have patiently waited for signs of progress following the installation of a new Executive Director of Small and Veteran Business Programs at the VA. While some improvements have been made, unfortunately the goals established nearly a year ago, have yet to be achieved.

This Committee has an oversight responsibility to the American people to ensure that tax dollars administered by the VA are going to legitimate, qualified, veteran owned businesses. I am hopeful that today's hearing will encourage and assist the VA in reaching their goals of improving the CVE once and for all.

As this Committee's own investigations and multiple Government Accountability Office investigations have shown, the ad hoc processes implemented by the CVE to verify and re-verify businesses are not working. The recommendations made by GAO and the VA's Inspector General go unheeded. Regardless of the reasons, the time has come for the CVE to take a hard look in the mirror, dig down to the root of the problem, and fix it.

With the attention this issue has received, the findings of the recent GAO study "Service-Disabled Veteran-Owned Small Business Program: Vulnerability to Fraud and Abuse Remains" are troubling. One of the many flaws in the system substantiated by GAO includes the VA's providing GAO with seven different counts of how many SDVOSBs were verified by the CVE under the Veterans Benefits, Health Care, and Information Technology Act of 2006 and the Veterans Small Business Verification Act of 2010. Given the amount of resources we have urged the VA to commit to the CVE, it is safe to say we expected better than this.

Over the past several months, this Committee provided the Department with feedback and input regarding the CVE's re-verification problem. With this in mind, we welcome the Secretary's recent announcement that the VA will move from annual re-verification to a bi-annual re-verification, something this Committee had been strongly urging the VA to do for a long time. While this move is commended, the problems plaguing the CVE go beyond re-verification.

For instance, the VA's decision to ignore the Small Business Administration's regulations regarding ownership and control of a business has resulted in unnecessary problems. The VA's choice to create its own standards for ownership and control has led to the CVE applying inconsistent standards to businesses applying for verification. In some instances, these arbitrary requests are invasive and have needlessly hurt legitimate, veteran owned small businesses.

It is not only the legislative branch that believes the CVE's improvised standards and reasoning is lacking, but also the judicial branch. This past March, a Federal District Judge for the District of Columbia stated in an opinion that "several of the grounds cited by the CVE as a basis for denying the application for inclusion in the VetBiz VIP database are described in such generalized and ambiguous terms that the Court is essentially left to guess as to the precise basis for the agency's decision."

Unfortunately, this characterization describes the experience of many businesses who have applied for certification and been denied.

On July 11, Chairman Stutzman and I sent a letter to Secretary Shinseki detailing these and other problems, and we continue to await a response. Today's hearing

provides an opportunity to candidly discuss CVE's failures, and where and how it can improve.

I want to thank all of our witnesses for their participation today, and I look forward to your testimony. I now yield to Chairman Stutzman of the Subcommittee on Economic Opportunity for his opening statement.

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**Prepared Statement of Hon. Marlin Stutzman, Chairman, Economic Opportunity**

Good morning. Everyone here knows about the problems VA has had implementing the small business provisions of a series of public laws beginning with P.L. 109-461. And we will hear more about it today.

While addressing those continuing issues is important, especially those which may include criminal activity, the past is not my focus. I want to know how and equally important, when VA will put in place the systems and policies that will shorten the time to be approved, decrease the level of effort needed to pass muster and lower the cost, and finally, create a community of veteran-owned businesses that is reasonably free from unqualified companies.

This is not just a VA task. There are issues we in Congress need to deal with. For example, current law effectively eliminates any company funded through investors because of the 100% control requirement. That means should we adopt a less stringent definition of control which then begs the question of how to prevent rent-a-vet operations from flourishing at the expense of fully qualified companies.

Another issue is what VA describes as negative control where a veteran majority owner can potentially be thwarted by a non-veteran minority owner. Another is how to best judge the level of control when there is a disparity in the résumés of a veteran majority owner and a minority owner.

Finally, there is the issue of recertification. I believe the current approach of recertifying every business, whether every year, or every two years, or three years or four years, etc. may overwhelm CVE resources. Let me explain using an assumed increase of 2,000 approved businesses annually. As you can see on the monitors, using the current two year recertification process, at the end of the 10th year, CVE will be recertifying 18,000 businesses. Even using what Mr. Leney will describe as the "simplified recertification process," I do not see how that magnitude of workload can be managed without a significant increase in resources beyond the current \$30 million per year. We need another approach, perhaps a risk-based one that recertifies companies only when they are identified as a potential contract winner.

So, Mr. Leney, you have your work cut out for you and I truly want you to succeed because that will be good for the veteran business community. I yield back.

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**Prepared Statement of Thomas J. Leney**

Chairman Johnson, Chairman Stutzman, Ranking Member Donnelly, Ranking Member Braley, and Members of the Subcommittees, thank you for inviting me to testify on the status of VA's Veteran-owned small business (VOSB) Verification Program and on VA's response to the Government Accountability Office (GAO) report GAO-12-697, "Service-Disabled Veteran-Owned Small Business Program: Vulnerability to Fraud and Abuse Remains."

*Overview*

VA has made substantial progress in improving the VA VOSB Verification Program. These improvements have reduced the potential for ineligible firms to take improper advantage of the "Veterans First" program, while making it easier and faster for legitimate VOSBs and service-disabled Veteran-owned small businesses (SDVOSBs) to gain greater access to VA procurement opportunities.

VA has addressed the issues raised in the GAO report, and believes the current VOSB verification process provides a high level of assurance that only eligible firms are verified. We have improved our quality control and become more aggressive in referring firms that we suspect are misrepresenting their status. In FY 2011 we referred 25 firms to the Office of Inspector General (OIG) for investigation as possible misrepresentation. So far in FY 2012, we have referred 59 firms. In FY 2011, all referrals were made to OIG with the expectation that if OIG declined to investigate, that the referral would forward on to the 8127 Debarment Committee. The Center for Veterans Enterprise (CVE) has established a formal process for referring misrepresentation to the VA 8127 Debarment Committee that has resulted in improve-

ment, going from no referrals in FY2011 to 28 referrals so far this year. The 8127 Debarment Committee has debarred 8 firms and 7 individuals and there are 9 firms and 20 individuals pending a decision from the committee.

At the same time we have taken action to improve the process, in order to enable eligible firms to be verified quickly and efficiently. By regulation, VA has 90 days from the time it receives a complete verification application to make a decision. When I appeared before you in July 2011, it took more than 130 days on average to process an initial verification application. CVE has now improved upon that time. A year ago, only 41 percent of initial applications were approved. In the past two months, due to our increased efforts to educate potential applicants on how to become compliant with the regulation, more than 70 percent of initial applications were approved.

*Need to balance efforts addressed by GAO with enabling firms to get verified*

The recent GAO report states that the government-wide SDVOSB self-representation program is still vulnerable to fraud and abuse. While acknowledging progress made by the VA VOSB Verification program, the report states that our program remains vulnerable due to an inconsistent approach to prioritizing the verification of firms and the inability of the CVE to accurately track the status of its efforts. VA believes this GAO finding is inaccurate, as the CVE knows how many firms have been verified, and is able to track its inventory of firms that have been verified or are currently in the application process. CVE tracks its inventory of firms in VIP using the Verification Master Inventory List due to limitations in the capabilities of our Verification Case Management System (VCMS). As of July 12, 2012, there are 6,079 firms in the Vendor Information Pages (VIP) and all of these firms have been verified under the requirements established by Section 502 of Public Law 109-461 in 2006. Of that total, 2,355 were verified prior to the enactment of Section 104 of P.L. 111-275 in 2010 and 3,724 were verified using the processes implemented after by that legislation. No firm appears in VIP as eligible for award unless it has been verified as owned and controlled by a Veteran or service-disabled Veteran. There are 1,449 firms listed in VIP whose verification has expired. These firms are annotated as in "reverification" status and they are not eligible to receive awards without undergoing reverification using the post-2010 Act process. These companies' two-year eligibility term has expired, but they previously submitted a reverification application. This "reverification" status allows them the opportunity to continue to pursue VA "Veterans First" set-aside contracts, but ensures that they will not receive an award until reverified under the current process.

VA has utilized a consistent approach to prioritization that is based on the regulation, fundamental principles of fairness, and availability of resources. Our specific priorities have evolved as appropriate in response to situational changes and resources.

In May 2011, the priorities were as follows:

- (1) Verification of new applications for firms that had previously only self-represented in VIP (i.e., firms that had not been reviewed under processes created for the 2006 Act or 2010 Act);
- (2) Verification of new firms that had initially applied for verification after the 2010 Act;
- (3) Requests for Reconsideration from firms denied verification; and
- (4) Reverification of firms initially verified in VIP under the process implemented prior to the 2010 Act.

"Unverified" firms were listed in VIP as "pending" but were not eligible for award of contracts. They were eligible to submit proposals and those that were pending award received top priority for verification as part of "fast track" program. VA committed to eliminating all unverified firms in VIP no later than December 31, 2011. By September 4, 2011, CVE completed that mission and since that time only those firms who have gone through the verification process are listed in VIP. CVE re-instituted the "fast track" program in May 2012 for those companies identified as being in "reverification" who are identified by the VA Contracting Officer as the apparently successful offeror for a VA Veterans First set-aside contract.

Today, the priorities are as follows:

- (1) Fast Track verification of firms in "Reverification" status that are pending award;
- (2) Simplified reverification of firms verified using post-P.L. 111-275 procedures;
- (3) Verification of new firms using the post- P.L. 111-275 procedures;
- (4) Requests for Reconsideration from firms denied verification; and

(5) Reverification of applications for expired firms initially verified in VIP under pre-P.L. 111–275 procedures.

CVE primarily initiates reverification of firms verified prior to P.L. 111–275 when their eligibility expires. This is in accordance with 38 CFR § 74.15 (c) that otherwise only authorizes CVE to initiate a verification examination “whenever it receives credible information calling into question a participant’s eligibility as a VOSB.”

To ensure that it verifies only eligible firms, CVE has made a number of improvements, to include:

- Established a Quality Control (QC) Review Program to address potential errors. An integral feature of the QC Program is a legal review of CVE’s work product performed by staff attorneys within the Office of General Counsel (OGC) when requested by CVE;
- Improved records management/document control;
- Strengthened review of Requests for Reconsideration by adding OGC review of all Requests for Reconsideration;
- Established risk management program;
- Established formal OIG referral process; and
- Established a Standard Operating Procedure process for referral of cases to the 8127 Debarment Committee in compliance with P.L. 109–461 requirement

While we believe that these improvements significantly reduce the risk of ineligible firms being verified, we continue to refine and improve the system. At last month’s National Veterans Small Business Conference in Detroit, Secretary Shinseki announced an interim final rule change that modified the eligibility term from one year to two years. This change had an immediate effect on 2,424 businesses whose eligibility would have expired, but retained their eligibility for another year. CVE will reverify these firms using the more robust verification process established post-P.L. 111–275, when their eligibility expires.

As stated at the National Veterans Small Business Conference in Detroit, VA is fully prepared to adjust the standards based on the lessons learned from the implementation of the verification regulation. To this end, the OSDDBU is in the process of seeking input from stakeholders in order to draft a significant change to 38 Code of Federal Regulations (CFR) Part 74. We will be using this feedback to draft proposed rule changes governing VA VOSB Verification. The rulemaking process is not quick. VA intends to be thorough in identifying and analyzing proposed changes to the regulation that will streamline the process without compromising the integrity of the examination.

The Committee has asked VA to address how often a business should be recertified. SBA’s HUBZone program is a three year recertification, while their 8(a) business development program requires annual recertification. We believe that the recent extension of the verification eligibility from one to two years is on balance the right decision. VA welcomes the Committee’s input on any possible regulation changes.

#### *Small Business Administration Comparison*

In close collaboration with the SBA, we compared the regulation that governs VA verification, 38 CFR Part 74, and the regulation that covers the government-wide SDVOSB program, 13 CFR Part 125 as well as 13 CFR Part 124 that governs the SBA 8(a) business development program. We have worked closely with cognizant SBA staff to examine the regulations and the existing case law on SDVOSB status eligibility. While we found that 38 CFR Part 74 is more detailed in its explicit requirements for ownership and control, there are very few substantive differences between the three regulations. Indeed, the VA requirements for ownership and control are nearly “word for word” the same as SBA’s requirements for their 8(a) business development program. The regulation that covers the SBA SDVOSB program, 13 CFR 125, is mostly silent in terms of ownership and control, and was written specifically for a self-representation program. VA and SBA have recently completed an informal crosswalk of the regulations for the VA VOSB Verification program (38 CFR Part 74), the SBA SDVOSB program (13 CFR Part 125) and the 8(a) business development program (13 CFR Part 124) in order to determine if there are material discrepancies between the regulations. With respect to the government-wide SDVOSB program, SBA case law indicates that the places where 13 CFR Part 125 is silent, SBA follows the 8(a) regulation. This is borne out by case law from the SBA Office of Hearings and Appeals (OHA) as early as 2005 in SBA No. VET–102.

Apart from the obvious difference that VA’s program also addresses Veteran-owned small businesses in addition to service-disabled Veteran-owned small business, VA and SBA determined that there was only one main discrepancy between the SBA regulations and interpretations and the VA regulation. This is due to the

provision of P.L. 109–461 for a surviving spouse exception that is unique to VA. Both VA and SBA will be posting a comparison document to their Web sites to illustrate the consistency between the regulations.

We also examined the document requirements for each regulation and again did not find substantial differences. Based on this review we do not believe that there is a need to modify the document requirements in order to avoid major discrepancies between programs. The documents required by each program are listed in the table below.

VA Document Requirements	SBA Document Requirements
<b>GENERAL</b>	
Business and/or personal professional, industry, and/or other <b>licenses, permits or accreditations</b>	Copies of licenses and agreements required for the operation of the business (e.g. franchise, license, and or similar contractual agreements with other concerns).
<b>Resumes</b> of all owners, directors, partners, officers and other key personnel	Names, addresses and resumes for all officers, directors, managing partners, and/or managers of the firm (the resumes should include the names of current and former employers and dates of employment).
<b>Approval letters</b> for businesses with Sensitive Compartmented Information Facility (SCIF) or "Vault"	Date and state in which the firm was established or incorporated.
	Name and address of the firm's owners, general partners, members, and principal shareholders/stockholders.
<b>FINANCIAL</b>	
<b>IRS Federal tax form 1040</b> and the attached <b>Schedule C</b> for the past three years	Copies of the business concern's two most recent Federal tax returns.
<b>IRS Federal Tax Form 1065</b> and corresponding <b>K-1</b> for past three years.	Unemployment tax filings for the two quarters prior to offer.
Appropriate IRS tax form filed; If filed as Sole Proprietorship ( <b>Schedule C</b> ), partnership (Federal tax form <b>1065 and K-1</b> ); or S Corporation ( <b>1120S and K-1</b> ) for the past three years.	Unemployment tax filings for the current quarter.
<b>Federal tax form 1120S</b> and <b>corresponding K-1</b> for the past three years	List of the firm's current financial obligations to other individuals or entities (e.g. loans, security agreements, guarantees, indemnifications, etc.).
For Joint Ventures, <b>applicable Federal tax returns</b> based on business type (see above) for the last three years for each participant	Breakdown of the firm's sources of revenue indicating total percentage of revenues attributable to individual source.
<b>Signature cards</b> authenticated by financial institutions (Banks/Credit Unions/etc.)	List of individuals who have signed or are expected to sign documents to facilitate the ability of the business concern to receive indemnifications or credit guarantees, who are NOT owners, officers, directors, employees, partners, or principal stockholders of the business concern..
Copies of approximately <b>20 negotiated company checks</b> .	.
<b>MANAGEMENT INFORMATION</b>	
<b>Lease, Management</b> and <b>Services agreements</b> , to include supporting payments	Copy of lease agreement.
<b>Operating Agreement</b> including all amendments	.

VA Document Requirements	SBA Document Requirements
<b>LEGAL STRUCTURE</b>	
<b>Ownership Agreements or Partnership Agreements</b> (i.e. proxies and voting trust agreements)	Buy/sell agreements.
<b>Partnership Agreement</b> , including all amendments	Percentage of voting stock in the firm or business owned by SDVs.
<b>Shareholders Agreement</b> , including all amendments	Shareholder agreements.
<b>Equity participation or equity plans</b> , restricted stock or ownership interests or options for stock or ownership interest or plans	List of any stock options outstanding and name of person holding option; include agreement.
Official <b>Certificate of Formation</b> and <b>Operating Agreement</b> with any amendments	Copies of promissory notes and proof of payment.
<b>Minutes</b> of first and most recent <b>stockholder and Board of Directors meetings</b> (Evaluator may request additional minutes, and applicant may supply additional minutes to explain any changes since the establishment of the Operating Agreement)	Copy of the last corporate meeting minutes.
All <b>corporate bylaws</b> and all amendments	Copy of corporate bylaws, partnership agreement, or operating agreement.
<b>Articles of Organization</b> for LLC's, including all amendments	Copies of stock certificates (front and back) for all classes of stock.
<b>Articles/certificate of incorporation</b> filed with the Secretary of State including all amendments	Articles of Incorporation.
<b>Joint Venture Agreement</b> and current opportunity on which joint venture is bidding	Percentage and description of work under this contract that will be performed by affiliates.
<b>Stock registers</b> for Applicant or <b>stock ledgers</b> showing listing all shares of issuance.	Stock ledger certified by the corporate secretary or president.
	List of stock held by a lender or other party as pledged collateral; include copy of agreement.
	List of stock voted under a proxy agreement, a trust and a copy of such agreement.
	Trust agreements.
	Copy of any and all contracts or agreements between the firm and any affiliates (including joint venture partners).
<b>OTHER</b>	
	Evidence that the firm's majority owner has been recognized by VA or DoD as service-disabled - written determination.
	Complete copy of proposal.
	List of the firm's affiliates (domestic and foreign).
	List of all owners, partners, directors, officers or principal shareholders/stockholders that hold a position (paid or unpaid) in another firm.

VA Document Requirements	SBA Document Requirements
	List of all owners, officers, directors, supervisors and/or employees that have ever been employed by or performed work for any affiliate of the firm.
	List of all facilities, equipment, and or personnel shared with other firms at the time of the bid opening.

#### *New Process Improvements*

In addition to the actions we have taken to strengthen the verification process, we have also made improvements in the process aimed at reducing the time it takes to receive an eligibility determination. CVE has made a number of process improvements, to include:

- Online application system;
- Streamlined review process;
- Standardized review procedures;
- On-demand application status check;
- Customer service help desk with expanded hours; and
- Determination letters posted online for on-demand retrieval.

The impact of improvements has been limited by the high rejection rate of applications. In 2011 more than 60 percent of applications were rejected. Our analysis of this result revealed that most rejections occurred as a result of a lack of understanding of the requirements, not fraudulent applications. In order to address this problem, we have taken action to help Veterans better understand the requirements. We developed Verification Assistance Briefs posted on VetBiz that clarified the requirements and explained in plain language what was needed. We have provided briefings to Veteran businesses on how to meet the standards. We have developed an on-line Verification Self Assessment Tool that takes a prospective applicant through a detailed review of their business model and its fit to the regulation. It covers all of the documentation required for their business type and enables them to assess if there is anything in their business model that would increase their risk of denial.

For those that need more assistance, we have established partnerships with the Procurement Technical Assistance Centers and several Veteran Support Organizations to provide counseling and answer questions for applicants. The verification counselors are trained with the same materials that are used to train our examiners. We rolled out the counseling program at the National Veterans Conference in Detroit, where it was extremely well-received.

#### *Conclusion*

VA has made significant progress in its VOSB verification program. We have overcome many of the challenges and vulnerabilities that were raised by the GAO and OIG reports but we seek continuous improvement. Mr. Chairmen and Members of the Subcommittees, this concludes my statement. I am pleased to answer any questions you may have.

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#### **Prepared Statement Richard J. Hillman**

#### **SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM**

#### **Vulnerability to Fraud and Abuse Remains**

Chairmen Stutzman and Johnson, Ranking Members Braley and Donnelly, and Members of the Subcommittees:

I am pleased to be here as you examine the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program's vulnerabilities to fraud and abuse. My remarks today are based on our report, *Service-Disabled Veteran-Owned Small Business Program: Vulnerability to Fraud and Abuse Remains*, recently issued.<sup>1</sup> In fiscal year 2010, federal agencies awarded \$10.8 billion in small-business obligations to firms participating in the SDVOSB program, according to the Small Business Administration (SBA). The program is intended to honor business-owning veterans

<sup>1</sup> GAO-12-697 (Washington, D.C.: Aug. 1, 2012).

who incurred or aggravated disabilities in the line of duty by providing their firms with sole-source and set-aside contracting opportunities. Firms must meet several requirements to be eligible to participate in the program, such as being majority-owned by one or more service-disabled veterans who manage and control daily business operations.

SBA administers the government-wide SDVOSB program but does not verify firms' eligibility, stating that its only statutory obligation is to report other agencies' success in meeting contracting goals. In addition to SBA's statutory authority over the government-wide program, the Department of Veterans Affairs (VA) has separate authority over issues related to its own SDVOSB program. VA awarded \$3.2 billion in SDVOSB contracts in fiscal year 2010—about 30 percent of government-wide SDVOSB awards. Unlike SBA, VA is bound by the Veterans Benefits, Health Care, and Information Technology Act of 2006 (2006 Act) to verify firms' eligibility. Since 2009, we have issued 10 reports and testimonies detailing how the government-wide and VA SDVOSB programs are vulnerable to fraud and abuse, making numerous recommendations to strengthen fraud-prevention controls.<sup>2</sup> In October 2010, Congress also passed the Veterans Small Business Verification Act (2010 Act), part of the Veterans' Benefits Act of 2010, to require VA among other things to more-thoroughly validate firms' eligibility before listing them in VetBiz, VA's database of eligible firms. In July 2011, we reported that both SBA and VA had taken positive steps in response to our findings and recommendations, but that vulnerabilities remained.

You requested that we again update our prior work and report the status of our recommendations. Our report assesses (1) VA's progress in addressing remaining vulnerabilities to fraud and abuse in its SDVOSB program and (2) actions taken by SBA or other federal agencies since our previous reports to improve government-wide SDVOSB fraud-prevention controls. To do so, we reviewed agency documentation and interviewed agency officials. We investigated new allegations from informants regarding firms that received SDVOSB contracts through fraudulent or abusive eligibility misrepresentation and highlighted 5 examples. Our examples cannot be projected to the overall population of SDVOSB firms. We also reviewed the status of 10 case studies from our prior work. We did not project the extent of fraud and abuse in the program. We conducted this performance audit from January 2011 to July 2012 in accordance with generally accepted government auditing standards.<sup>3</sup> Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed our investigative work from January 2011 to July 2012 in accordance with the standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

In summary, VA's SDVOSB program remains vulnerable to fraud and abuse. VA has made inconsistent statements about its progress in verifying firms listed in VetBiz using the new, more-thorough process the agency implemented in response to the 2010 Act. In one communication, VA stated that as of February 2011, all new verifications would use the 2010 Act process going forward. According to the most-recent information provided by VA, there are 6,079 SDVOSBs and veteran-owned small businesses (VOSB) listed in VetBiz. Of these, 3,724 were verified under the more-through process implemented under the 2010 Act, and 2,355—over 38 percent—were verified under the less-rigorous 2006 Act process. The presence of firms that have only been subjected to the less-stringent process that VA previously used represents a continuing vulnerability.<sup>4</sup> In 2011, VA's Office of Inspector General

<sup>2</sup>See "Related GAO Products" in GAO-12-697.

<sup>3</sup>Some of the work in this report is based on prior GAO products issued in 2012, 2011, and 2009. GAO, *Service-Disabled Veteran-Owned Small Business Program: Governmentwide Fraud Prevention Control Weaknesses Leave Program Vulnerable to Fraud and Abuse, but VA Has Made Progress in Improving Its Verification Process*, GAO-12-443T (Washington, D.C.: Feb. 7, 2012); *Service-Disabled Veteran-Owned Small Business Program: Additional Improvements to Fraud Prevention Controls Are Needed*, GAO-12-205T (Washington, D.C.: Nov. 30, 2011); *Service-Disabled Veteran-Owned Small Business Program: Preliminary Information on Actions Taken by Agencies to Address Fraud and Abuse and Remaining Vulnerabilities*, GAO-11-589T (Washington, D.C.: July 28, 2011); and *Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts*, GAO-10-108 (Washington, D.C.: Oct. 23, 2009).

<sup>4</sup>On June 27, 2012, VA implemented an interim rule that extends the eligibility of verified firms to 2 years. VA told us it interprets "verified" to include any firms that have been verified under either the 2006 Act or 2010 Act processes. Consequently, implementation of this rule means that thousands of firms will continue to be eligible for contracts even though they have not undergone the more-thorough 2010 Act process.

(OIG) issued a report finding that VA’s document review process under the 2006 Act “in many cases was insufficient to establish control and ownership . . . [and] in effect allowed businesses to self-certify as a veteran-owned or service-disabled veteran-owned small business with little supporting documentation.”

VA has taken some positive action to enhance its fraud-prevention efforts. VA generally concurred with recommendations we issued in October 2011 and has established processes in response to 6 of the 13 recommendations (fig. 1). VA has also begun action on some remaining recommendations, such as providing fraud-awareness training and removing contracts from ineligible firms, though these procedures need to be finalized.

**Figure 1: Status of GAO’s Previous Recommendations**

Fraud-prevention controls	GAO recommendations	Status as of June 2012
<b>Preventive</b>	Provide regular fraud-awareness training to CVE(a) and VA contracting personnel.	○
	Provide additional guidance and training to the VA contracting personnel on the use of the VetBiz website so that SDVOSB contracts are only awarded to verified firms.	●
	Establish formal procedures for VA staff to refer suspicious applications to the OIG and provide guidance on what type of cases to refer to the OIG.	●
	Explore the feasibility of validating applicants’ information with third parties, for example, requesting consent from SDVOSB applicants to validate tax information with the IRS to assess the accuracy of the information provided.	●
	Formalize a process for conducting unannounced site visits to firms identified as high risk during the verification process.	●
<b>Detection and Monitoring</b>	Develop and implement procedures for conducting unannounced site visits to contract performance locations and interviews with contracting officials to better assess whether verified companies comply with program rules after verification.	○
	Develop and implement a process for unannounced site visits to verified companies’ offices to obtain greater effectiveness and consistency in the verification program.	●
	Develop procedures for risk-based periodic reviews of verified firms receiving contracts to assess compliance with NAICS(b) size standards and SDVOSB program rules.	○
<b>Investigations and Prosecutions</b>	Develop and implement specific processes and criteria for the Debarment Committee(c) on compliance with the requirement in the 2006 Act to debar, for a reasonable period of time, firms and related parties that misrepresent their SDVOSB status.	○
	Develop and implement specific procedures and criteria for staff to make referrals to VA’s Debarment Committee and VA’s OIG as a result of misrepresentations identified during initial verification and periodic reviews.	●

Fraud-prevention controls	GAO recommendations	Status as of June 2012
	Develop specific guidelines outlining the Debarment Committee's decision process to debar firms that misrepresent their SDVOSB status.	○
	Develop procedures on removing SDVOSB contracts from ineligible forms.	○
	Formalize procedures to advertise debarments and prosecutions.	○

- Process established
- Process not established

Source: GAO and analysis of VA data.

(a) VA's *Center for Veterans Enterprise (CVE)* is responsible for maintaining *VetBiz* and implementing VA's verification program.

(b) The *North American Industry Classification System (NAICS)* is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(c) VA's *Debarment Committee* was instituted in September 2010 specifically to debar firms that had violated SDVOSB regulations.

Regarding the government-wide SDVOSB program, no action has been taken by agencies to improve fraud-prevention controls. Relying almost solely on firms' self-certification, the program continues to lack controls to prevent fraud and abuse. For example, the Department of Defense (DOD) OIG reported in 2012 that DOD provided \$340 million to firms that potentially misstated their SDVOSB status. SBA does not verify firms' eligibility status, nor does it require that they submit supporting documentation. While SBA is under no statutory obligation to create a verification process, five new cases of potentially ineligible firms highlight the danger of taking no action. These firms, discussed below, received approximately \$190 million in SDVOSB set-aside and sole-source contract obligations.

- *Non-SDVOSB joint venture.* An SDVOSB entered a joint venture with a non-SDVOSB firm and received about \$16 million in government-wide SDVOSB set-aside contract obligations. However, the owner, a service-disabled veteran, admitted to our investigators that his SDVOSB firm did not manage the joint venture.
- *VA-denied firm.* Though VA denied this firm SDVOSB status in 2010 because the firm was not controlled by a service-disabled veteran owner, it continued to self-certify in the Central Contractor Registration (CCR).<sup>5</sup> The firm had received \$21 million in SDVOSB set-aside and sole-source contracts from multiple agencies, and was awarded about \$860,000 by the General Services Administration and the Department of the Interior (DOI) after it was denied by VA.
- *Multiple firms not veteran-controlled.* Two firms and a joint venture firm received over \$91 million in SDVOSB set-aside and sole-source contract obligations from VA and the Department of Health and Human Services. However, VA determined they were ineligible because they were not controlled by the service-disabled veteran who owned one of the firms. The firms have not been removed from the government-wide SDVOSB list.
- *Not service-disabled veteran-controlled.* This firm was ineligible for the SDVOSB program because the veteran did not control daily operations—he lived 500 miles away and received only a \$12,000 salary. This firm received about \$37 million in SDVOSB set-aside contract obligations from DOD and DOI. SBA has since debarred the firm from the program.
- *Service-disabled veteran otherwise employed.* The firm may be ineligible because the service-disabled veteran owner worked as an attorney at a legal services organization Monday through Friday about 40 hours a week. This raises questions about his ability to also manage the day-to-day proceedings of the

<sup>5</sup> CCR is the primary registrant database for the U.S. federal government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions, including federal agency contract and assistance awards.

SDVOSB firm, which received about \$25 million in SDVOSB set-aside and sole-source contract obligations from VA and the Department of Transportation.

The firms in our previous 10 case studies that we reported in October 2009 have been or are under investigation by the SBA OIG. The SBA OIG has joined forces with other agency OIGs to pursue several cases. For example, enforcement actions have been taken against 3 of the 10 cases. Specifically, two individuals related to our cases have been charged with wire fraud in relation to their misrepresentation as an SDVOSB and another firm pled guilty to wire fraud in relation to another small-business program.

To address vulnerabilities in the government-wide program, we previously suggested that Congress consider providing VA with the authority necessary to expand its SDVOSB eligibility-verification process government-wide. Such an action is supported by the fact that VA maintains the database identifying which individuals are service-disabled veterans and is consistent with VA's mission of service to veterans. However, as shown by our current work, VA's program remains vulnerable to fraud and abuse because the agency has been unable to accurately track the status of its efforts and because potentially ineligible firms remain listed in VetBiz. Consequently, VA's ability to show that its process is successful in reducing the SDVOSB program's vulnerability to fraud and abuse remains an important factor in any consideration about the potential expansion of VA's eligibility verification process government-wide.

To minimize potential fraud and abuse in VA's SDVOSB program and provide reasonable assurance that legitimate SDVOSB firms obtain the benefits of this program, we recommend in our newly issued report that the Secretary of Veterans Affairs ensure that all firms within VetBiz have undergone the 2010 Act verification process. Specifically, this should include consideration of the following three actions: (1) inventory firms listed in VetBiz to establish a reliable beginning point for the verification status of each firm; (2) establish procedures to maintain the accuracy of the status of all firms listed in VetBiz, including which verification process they have undergone; and (3) expeditiously verify all current VetBiz firms and new applicants under the more-thorough 2010 Act verification procedures.

VA generally concurred with our recommendations but expressed concern about how specific report language characterized its program. GAO made some changes to the report as appropriate but continues to believe that the program remains vulnerable to fraud and abuse. In written comments, SBA stated that it is committed to eliminating fraud, waste, and abuse in all of its programs including the government-wide SDVOSB program.

Mr. Chairmen, Ranking Minority Members, and Members of the Subcommittees, this concludes my prepared remarks. I would be happy to answer any questions that you or other members of the subcommittees may have.

For additional information about this testimony, please contact Richard J. Hillman at (202) 512-6722 or hillmanr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Other key contributors to this statement include Jennifer Costello, Assistant Director; Arturo Cornejo; Gloria Proa; Abby Volk; and Timothy Walker.

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### Prepared Statement of James J. O'Neill

Chairman Johnson and Chairman Stutzman, Members of the Subcommittees, thank you for the opportunity to discuss the Office of Inspector General's investigative work in the Service Disabled Veterans Owned Small Business (SDVOSB) program. The OIG investigates allegations that companies and individuals have fraudulently obtained Government noncompetitive set-aside contracts by misrepresenting their SDVOSB status or eligibility, which would deprive legitimate, eligible veterans from obtaining these economic opportunities earned through their honorable military service.

#### BACKGROUND

The OIG has full law enforcement authority to investigate allegations of criminal activity involving VA programs and operations. The OIG's Office of Investigations has committed significant resources to investigating fraud in SDVOSB operations. As of June 2012, OIG has worked a total of 144 cases involving SDVOSB fraud. Currently, we have 96 open criminal investigations, including 37 joint cases with the Small Business Administration (SBA) OIG, 16 with the General Services Administration (GSA) OIG, 14 with the various Department of Defense criminal investigative agencies<sup>1</sup>, and 13 with the Federal Bureau of Investigation.

We have closed 48 cases since fiscal year (FY) 2009: 35 were unsubstantiated, 8 lacked interest by the United States Attorney's Office for prosecution, and 5 involved administrative remedies.

Of the cases currently open, 56 are "pass-through" schemes, in which a purported SDVOSB obtains the Government contract award and passes it on to a non-

<sup>1</sup>Including the Defense Criminal investigative Service (DCIS), Army Criminal Investigations Division (CID), and Air Force Office of Special Investigations.

SDVOSB business to perform the work; 28 cases involve “rent-a-vet” schemes, in which an otherwise ineligible concern uses a genuine service-disabled veteran as a front to try to establish SDVOSB eligibility; 6 cases involving veterans who are not service-disabled or, in some cases, people who are not even veterans but who attempt to obtain SDVOSB status; 1 case involving a veteran who is marketing his status to concerns to try to provide them SDVOSB status; and 5 are cases combining one or more or other types of schemes.

In the 144 SDVOSB investigations, 419 subpoenas have been issued; 26 search warrants have been executed; and 24 consensual monitorings have been conducted. We have effected 12 arrests, 16 indictments, and 6 convictions. The contract value of the open cases is \$908.2 million, including \$158.8 million in American Recovery and Reinvestment Act (ARRA) funds.

We have completed our investigation in 20 of the 96 open cases. Another 29 cases have earned prosecutive interest by Assistant United States Attorneys (AUSA) but still require more investigation. Of the 96 open SDVOSB cases, 77 involve construction contracts. Eleven cases involve a service-disabled veteran who is a former employee of a large company. Three cases involve allegations of bribery of Government employees.

The OIG has developed a good working relationship with the Center for Veterans Enterprises (CVE) involving potential fraud matters. Since February 2011, CVE has made 84 referrals to the OIG of which we accepted 34, declined 46, and already had open cases in 4 instances.

We have also worked with the Government Accountability Office (GAO) in this area. We have met with GAO to discuss cases cited in their previous reports. Several of our cases arose from GAO referrals, and we anticipate continuing to work with GAO in this area.

#### **OIG INVESTIGATIONS**

Following is a discussion of several cases in which there has been prosecutive action that has been made public. We cannot discuss nonpublic information on pending cases as that might compromise the ongoing criminal prosecutions.

##### *Mitsubishi Construction (New York, New York)*

In January 2010, a confidential source contacted the OIG with allegations that Mitsubishi Construction (Mitsubishi) is not owned and operated by a service-disabled veteran but claims it is an SDVOSB. Mitsubishi received approximately \$16 million in SDVOSB and Veteran Owned Small Business (VOSB) contracts from June 2007 through June 2010. The OIG investigated this case jointly with the SBA OIG. The investigation established from incriminating statements from Mitsubishi President and Chief Executive Officer John Raymond Anthony White that a service-disabled veteran was not involved in running the company. White claimed to be a service-disabled veteran to obtain Government construction contracts and later made incriminating statements to a Federal agent that another individual was the service-disabled veteran who actually was the majority owner of the company. In April 2011, White was found guilty of major fraud against the United States, mail fraud, obstruction of justice, and making false statements by a jury in the U.S. District Court for the Southern District of New York. White faces a maximum sentence of 75 years in prison and maximum fine of \$3.75 million. Prior to the verdict, both Mitsubishi and White had been suspended and debarred<sup>2</sup> by VA. Mitsubishi had self-certified its SDVOSB status under the earlier regulations.

##### *B&J Multi Service Corporation (Leominster, Massachusetts)*

In November 2009, we received an allegation from a confidential source that B&J Multi Service Corporation (B&J) did not meet eligibility requirements for the SDVOSB program. We also received information from GAO in December 2009 about this company. Our joint investigation with the SBA OIG, the GSA OIG, Army CID, and the U.S. Department of Labor OIG substantiated the allegation.

On June 22, 2012, a criminal information was filed in the U.S. District Court for the District of Massachusetts charging Tyrone Jones, who is not a service-disabled veteran, with one count of conspiracy to commit wire fraud. Jones faces up to 5 years in prison, followed by 3 years of supervised release, and a fine of \$250,000 or twice the gross gain or loss from the crime, whichever is greater. B&J had self-certified its SDVOSB status under the earlier regulations. B&J has been referred to the VA Suspension and Debarment Committee.

<sup>2</sup>Debarment is an administrative remedy to bar individuals and companies from obtaining Federal contracts for a specific period of time.

*GMT Mechanical (Grantville, Georgia)*

The OIG initiated a joint investigation with the SBA OIG after receiving a referral from GAO alleging that GMT Mechanical (GMT), an SDVOSB, was a shell company. Our investigation revealed that Arthur Wayne Singleton, the owner of Singleton Enterprises, which is not an SDVOSB, approached a bedridden Vietnam War veteran and proposed the idea of starting a joint venture, GMT, using the veteran's service-disabled veteran status. The veteran performed no work for either company, did not have an ownership stake in GMT, and GMT was merely a pass-through for Singleton Enterprises. In November 2011, a Federal grand jury in the U.S. District Court for the Northern District of Georgia indicted Singleton and Singleton Enterprises on charges of wire fraud and major fraud against the United States. The wire fraud counts carry a maximum sentence of 20 years in prison and up to \$250,000 in fines, and the major fraud count carries a maximum sentence of 10 years in prison and a fine of \$1,000,000. GMT had self-certified its SDVOSB status under the earlier regulations. Both Singleton and Singleton Enterprises have been debarred from doing business with the Federal government.

*CJMS Contracting (St. Louis, Missouri)*

We initiated a joint investigation with the SBA OIG and the GSA OIG after receiving allegations that CJMS Contracting, LLC (CJMS) was engaging in SDVOSB fraud and that a VA employee was accepting bribes and/or gifts from the company. Our investigation revealed that Joseph Madlinger, a civil engineer and project manager engaged in commercial construction, and Michael Woodling, who was doing business as Gateway Contractors, approached a service-disabled veteran about setting up a construction company to compete for Government contracts under the SDVOSB program. They gave Russell Todd, a now retired VA employee, luxury box tickets at sporting events, lunches, and interest-free loans to ensure that CJMS continued to receive VA contracts. Todd steered \$3.4 million in work at VA to Madlinger and Woodling.

In February 2012, in U.S. District Court for the Eastern District of Missouri, Madlinger and Woodling pled guilty to conspiracy involving the illegal payment of gratuities. As part of his plea agreement, Woodling agreed to forfeit \$1.5 million and a 2011 Jaguar Series XKR Model XK, which were proceeds of his criminal activity. In May 2012, Madlinger was sentenced to serve 2 years in prison followed by 1 year of probation and ordered to pay a \$50,000 fine. Woodling was sentenced to serve 3 years' probation and ordered to pay \$1,550,000 in restitution and a \$60,000 fine. In March 2012, Todd pled guilty to accepting an illegal gratuity and was sentenced to 15 months' imprisonment and 12 months' probation. CJMS had self-certified its SDVOSB status under the earlier regulations and was later verified by CVE under the current regulations as eligible based on false information. We submitted information to the VA Suspension and Debarment Committee on the individuals and the two companies.

*Silver Star Construction (Blue Springs, Missouri)*

A joint VA OIG, SBA OIG, GSA OIG, and DCIS investigation determined that Silver Star Construction, LLC (Silver Star) acted as a pass-through company for a larger company and that the owner was not a service-disabled veteran. Silver Star received more than \$8 million in Government contracts from December 2008 through July 2010. Warren Parker, owner of Silver Star, had claimed to have been awarded three Silver Stars, four Bronze Stars, three Purple Hearts, and other medals for valor during service in Vietnam, Cambodia, and Laos. In June 2011, Warren Parker, Silver Star Construction, and three other individuals, Warren's wife Mary Parker, their son Michael Parker, and Thomas Whitehead, the owner of the larger company, were indicted in the U.S. District Court for the District of Kansas for conspiracy, major fraud against the United States, wire fraud, false statements, and engaging in monetary transactions in property derived from specified unlawful activity. Silver Star and all four individuals have been suspended. The investigation determined that Warren Parker served in the National Guard, was not a service-disabled veteran, and never served overseas. Silver Star had self-certified its SDVOSB status under the earlier regulations.

On April 9, 2012, Warren Parker pled guilty to conspiracy to commit fraud against the United States, major program fraud, wire fraud, money laundering, and making a false statement. In addition, he pled guilty to the forfeiture counts of the indictment which will result in a \$6.8 million judgment against him. Parker agreed to forfeit personal property, including military medals and medallions, veterans' patches, various certificates and DD 214 forms, and a notebook he labeled "Book of Death" which contained a list of Vietnam War "sniper kills." Parker faces a potential sentence of up to 30 years in prison.

*M.R. Tafoya Construction (Albuquerque, New Mexico)*

In February 2012, Max R. Tafoya and Tyler Cole, his son-in-law, were indicted by a Federal grand jury in the U.S. District Court for the District of New Mexico for conspiracy, major fraud against the United States, and false statements after a proactive VA OIG investigation determined that Tafoya and Cole conspired to defraud VA by falsely claiming that M.R. Tafoya Construction, Inc., was an SDVOSB. Andrew Castillo, a service-disabled veteran who received payment for allowing the use of his status, had previously pled guilty to conspiracy and major fraud. Tafoya and Cole face a maximum penalty of 5 years' imprisonment and a \$250,000 fine for the conspiracy charge, 10 years' imprisonment and a \$1 million fine on each of the four fraud charges, and 5 years' imprisonment and a \$250,000 fine for each of the false statement charges. Between March 2009 and February 2012, the company had been awarded five SDVOSB set-aside contracts totaling \$10.9 million. The company and the three individuals were suspended in March 2012. Tafoya had self-certified its SDVOSB status under the earlier regulations.

*McDonald Roofing and Construction (Boise, Idaho)*

After receiving a GAO referral alleging that McDonald Roofing and Construction (MRC), an SDVOSB, was a pass-through established for the sole purpose of obtaining set-aside contracts, we initiated a joint investigation with the SBA OIG, the GSA OIG, the Department of Interior OIG, the Department of Agriculture OIG, DCIS, and Army CID. Our investigation substantiated the allegation. In March 2012, MRC pled guilty to wire fraud charges relating to HUBZone contracts. In July 2012, MRC was sentenced to 3 years' probation and ordered to pay a \$5,000 fine. MRC had self-certified its SDVOSB status under the earlier regulations.

**OTHER ACTION AVAILABLE**

Criminal and civil prosecution, and the suspension and debarment actions resulting from prosecution, are not the only actions available to the Government in these cases. We have instructed our special agents to begin discussions with prosecutors upon conclusion of the covert phase of an SDVOSB investigation about pursuing fact-based suspension and debarment before prosecution commences. Prosecutors will have to determine what evidence can be made available to VA to support these actions and compromise neither Grand Jury secrecy nor successful prosecution.

**CONCLUSION**

As our work demonstrates, the VA OIG has devoted significant resources to the allegations of fraudulent claims of SDVOSB status for the purposes of obtaining noncompetitive set-aside contracts for Government work. Our work has produced significant prosecutions as well as suspensions and debarments of the wrongdoers. Our pending cases give us good reason to expect these successes will continue into the foreseeable future. This work will bring to light, and bring to justice, criminals who have deprived legitimate service-disabled veterans who have earned the SDVOSB eligibility as a result of disabilities they sustained during service to our country and will increase the economic opportunities for those veterans for whom the SDVOSB program was designed.

Chairman Johnson and Chairman Stutzman, this concludes my statement. I welcome any questions that you or other Members of the Subcommittees may have about our work in this area.

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**Prepared Statement of Richard Weidman**

**INTRO:**

Good morning, Chairman Johnson, Chairman Stutzman and other distinguished members of the subcommittees on Oversight and Investigation and Economic Opportunity. The Vietnam Veterans of America (VVA) is pleased to have the opportunity to appear here today to express our views and the views of many veteran business owners who are members or affiliates of the Veterans Entrepreneurship Task Force (VET-Force).

Both VVA and the VET-Force have been deeply involved with the Department of Veterans Affairs' (VA) Veterans Small Business Verification process as carried out by its Center for Veteran's Enterprise (CVE) since its beginning. As the regulation was being crafted, we voiced our concerns about the unintended consequences. As companies began to receive denials with no apparent basis, we saw these unfold with increasing severity and impact on our veteran businesses. For more than 5 years, we have sought to obtain the definitions, documentation requirements, stand-

ards and criteria that were utilized by CVE so that we could understand and communicate to the veteran community why companies were being denied for following standard, best business practices.

In just this past May, VA's Small Business Director implemented a Partner Education Program to enable Procurement Technical Assistance Center (PTAC) and Veteran Service Organization representatives to better assist Veteran business owners with understanding CVE's requirements, criteria, process and standards. VVA, VET-Force, the American Legion, Nabvets, Vets Group, the National Veteran Small Business Coalition are some the groups who have been participating. While this program has produced 3 rather productive workshops, it has also shown that most Veterans are denied due to issues of control and that there are many sections of the regulations which are subject to the interpretation of the reviewer.

*Major Issues Affecting the VA's Veterans Business Verification Process*

There are a number of issues that have surfaced regarding the verification process undertaken by CVE to ensure that a business concern is a SDVOSB or VOSB; here are just a few:

**I. Verification of Veterans Status, Ownership & Control.** CVE is either understaffed or lack a sufficient number of experienced staff persons qualified to conduct the veteran business verification procedures as defined by 38 CFR Part 74. It's CVE's task to collect and review the necessary documents from veteran business owners as well as to schedule a site visit of the applicant's company.

**Veterans Status.** The documents needed are to verify that the business owner is a veteran who was discharged under conditions other than dishonorable or is a service disabled veteran who possesses either a disability rating letter issued by DOD or the VA. Veterans being listed in other VA databases is supposedly no longer required.

**Ownership, Control & Management.** Additional documents are needed to establish if the veteran(s) or service disabled veteran(s), or in the case of a veteran with a permanent or severe disability, the spouse or permanent caregiver of such veteran, meet the majority ownership requirement, and that they control the company by performing the day-to-day management, which is clearly defined in 38 CFR 74.

**Verifying Ownership.** Verifying the status of the veteran seems to be the easiest part; particularly since the VA already maintains or has access to the records of veteran and service disabled veterans. **Verifying Ownership is somewhat more challenging** because CVE must verify if the Ownership is direct and unconditional. It must verify if the type of Ownership is that of a Partnership, Limited Liability Company, or a Corporation; and if stock is involved, it must verify the stock options' effect on the Ownership. There's also the matter of determining Ownership interests when an owner resides in any of the community property States or territories of the United States.

**Verifying Control.** According to 38 CFR 74.4, **Control is not the same as Ownership, even though both may reside in the same person.** Control means management and long-term decision making authority. CVE must verify that the service disabled veteran or veteran business owner has both. But where this gets more involved, is when control is sometimes contingent on who has the expertise or licenses to run the operation. An owner who is a computer engineer may not be the best CEO. But according to CVE's verification requirements, the owner must hold the highest officer position in the company.

Then there is also the somewhat conflicting view that owners need not work in the company full-time but must show sustained and significant time invested in the business. But there is also the requirement that one or more veteran or service disabled veterans who manage the company must devote full-time to the business during normal working hours. And even though the veteran owner has an unexercised right to cause a change in the management quickly or easily, use of a non-veteran manager may disqualify the company as being veteran owned.

In addition, all of these control issues have to be verified in the context of the type of company - Partnership, Limited Liability Company, or Corporation. And it must be determined to what extent do non-veterans have the power to influence or control the company - either directly or indirectly via critical financial or bonding support, Board actions, etc.

**Some examples:** (1) the regulation states that Control of the business means that Ownership must be unconditional. So we are having 51% Service Disabled Veteran Business Owners whose spouse is a 49% owner of the business being denied because the ownership documents state that the 49% owner has some say in how

the company can be disposed of. Therefore, the majority owner does not have unconditional control.

And may I point out that in this example, the decision regarding disposing of the company has nothing to do with the fact that the company is capable and qualified to provide goods or services to the VA;

(2) We are hearing from Veterans who are 100% owners of their companies but they also have a Board of Directors. So even though the owner is President of the company and Chairman of the Board, if each board member is allowed one equal vote then the owner is viewed by CVE to not have full control and is therefore denied;

(3) And even more than ever before we are hearing from Veteran Business Owners who live in 'Community Property States' where for a veteran who is married, most property acquired during the marriage is owned jointly by both spouses and is divided upon divorce, annulment or death. So even in light of the fact that the business is 51% or more owned by the Veteran according to all documents related to the ownership of the business, such veteran is likely to be denied by CVE; and

(4) According to the program guidelines used by CVE, based on their interpretation of the governing regulations found in 38 CFR 74, a Veteran Business Owner must demonstrate that they control both the day-to-day management and administration of business operations. While CVE uses administration and business operations as part of their criteria, these are clearly not part of the regulatory requirement (38 CFR 74.4) which clearly states:

Section 74.4 who does CVE consider to control a veteran-owned business?

(a) Control means both the day-to-day management and long-term decision making authority for the VOSB. Where, from section 74.1 definitions "Day-to-day management means supervising the executive team, formulating sound policies and setting strategic direction. Therefore, if a Veteran Business Owner cannot convince CVE that they are capable of controlling more than one business or controlling their business while being employed by another, they will be denied.

And to further discourage Veteran Business Owners in this situation, if the Veteran Business Owner has hired a Business Manager with more expertise than them to run the day-to-day operations, then that will also be grounds for denial according to CVE. From CVE's own definitions and regulation, there is clearly no basis or rationale for these denials.

We are frequently receiving complaints regarding decisions like these resulting in the Veteran Business Owner being denied and causing the loss of millions of dollars and numerous jobs, many in the districts of members of these subcommittees.

The procedures used by CVE are sometimes questionable. We receive many complaints from veterans who were told that they needed to submit additional documentation without being given a clear explanation of why the information is required or what the statutory or regulatory basis is for these documents. Our constituents tell us that these requests are overly invasive and burdensome.

We are also concerned about the security of the documentation submitted and the quality of the review of documentation. Time after time, we have received complaints whereby CVE has reportedly lost the documentation submitted with the Veteran's application. And this does not always occur during the initial submission. As in the case of Ron Washington, who was scheduled for a site visit by a CVE examiner only to find that the CVE examiner claimed that he could not locate the appropriate documents submitted with the application.

We understand the necessity for the CVE program of verification and/or certification of Veteran and Service Disabled Small Business Owners.

We know that many of you have supported and voted for legislation that will benefit Veterans and their families. We realize that through the use of various procedures, guidelines, and regulations a program can be established for only a selected group. And those applicants that don't meet those requirements will not be admitted thus preventing fraud and misrepresentation by others who don't qualify.

We are well aware of that the use of more stringent verification requirements were implemented by CVE following a GAO report that exposed flaws in the verification process, a report by the Inspector General, and the passage of Public Law 111-275. So we know that CVE and the VA wants to decrease its chances of error.

But these veterans represent thousands of capable and qualified veterans and service disabled veteran business owners of all races, Black, White, Hispanic, Asian, Jewish, they are Male, Female, Old, and Young. Their preference is due to service and sacrifices in defense of this country and for no other reason.

And when the requirements of the CVE program are so narrowly viewed and overly burdensome that nearly half as many Veteran Business Owners are being

harmful by the very agency that it is designed to protect, support, and honor for their service to our country, then it's time we modify, improve or replace the existing program.

**II. Misperception of CVE's 'VERIFIED' status.** Other ways many Veteran Business Owners are being harmed as a result of CVE's implementation of the VA Veteran Small Business Verification Program. Many if not all federal agency contracting personnel believe that SDVOSBs and VOSBs must first be registered in the VA's Veteran Small Business Database and produce a document stamped with a "VERIFIED" seal of approval by CVE in order to be recognized as a genuine SDVOSB or VOSB. And it's not hard to determine how this misperception came about.

For several years now, CVE, other organizations, including the VET-Force, have been encouraging veteran business owners to register in the Veterans Small Business Database and for federal agencies and Large Primes to use the Veterans Small Business Database as the 'Authoritative Place' to locate capable and qualified veteran business owners. However, this was before the actual verification standards and procedures had begun.

According to Public Law 108-183, the Veterans Federal Procurement Program, a veteran is only required to SELF-CERTIFY as a SDVOSB, in order to do business under this small business preference group. There is no formal certification by SBA or any other entity required. However, under Public Law 109-461, in order to do business with the VA, a veteran or service disabled veteran owned business must successfully complete VA's verification process and register in the VIP database that's open for use by all federal agencies, Large Primes, and the public.

While these issues listed above may be considered to be some of the major ones creating controversy about CVE's management of the VA's Veterans Small Business Verification process, there are many other issues that will result in a determination of Denial.

**Recommendations to Address the Major Issues.**

1. Provide transparency to the OGC opinions and decisions that are the basis for CVE standards and adjudication procedures.

2. For now, separate the verification process into two phases.

**Phase One:** Verify Veteran Status Only for all registrants in the database. Continue Self-Certification of Ownership as allowed under Public Laws 106-50 and PL 108-183 while verifying - whether the business owner is a veteran or service disabled veteran.

**Phase Two: Verify Ownership and Control.** Review of documents for ownership starting with SDVOBs and then VOSBs seeking to perform contracts with the VA. It should be noted however, that verification of Control should only be to the extent necessary to support the Ownership and to ensure that the company is not being used as a 'Rent-A-Vet' or a pass through company.

3. Provide a clear definition of the roles and responsibilities required to demonstrate control of a company. These must be compliant with and limited to the definition provided in section 74.1.

4. Allow the verification of more than one company owned by the same veteran(s). Entrepreneurship should not be stifled for the sake of convenience. Each company should be evaluated and verified on its own merit. Any agency will always have the right to determine the select criteria to satisfy contract requirements.

5. Change Title 38 definition of ownership and control to match Title 13, and hence the regulations to bring VA into sync with a government wide definition.

6. Add Center for Veterans Enterprise (CVE) to Title 38, putting into Economic Opportunity Administration (currently under the Deputy Undersecretary of Veterans Benefits for Economic Opportunity). We believe that there needs to be a free standing fourth division of VA known as the Veterans Economic Opportunity Administration (VEOA). The VEOA would include Vocational Rehabilitation, Veterans Education Service, the Center for Veterans Enterprise (restored to its original conception of assisting veterans in doing business with the VA), a separate Verification Unit for veteran owned businesses and service disabled veteran owned businesses, and lastly the Veterans Employment & Training Service (currently a "red headed stepchild at the Department of Labor).

To work properly, there will have to be much better coordination and collaboration of the VEOA with the Small Business Administration (SBA) and the Office of Personnel Management (OPM). While we also believe that much closer cooperation and

coordination with the Department of Defense is needed, we will save comment on that "Gordian Knot" for another day.

All of the above can be accomplished within existing resources, but it will take significantly better organization and training of staff, as well as increased accountability demanded of managers and supervisors. Most importantly, however, it will take a significant and vital change in corporate culture of the new division.

The very best and the most important readjustment program we can provide for veterans who are de-mobilized or discharged is to the opportunity to obtain and sustain meaningful employment at a living wage. This is the watershed event of the entire readjustment process, and should be treated as such.

Messrs. Chairmen, thank you for pursuing this vital issue, for your strong leadership in holding this hearing today, and for affording us this opportunity to present our views here today. I will be happy to answer any questions.

#### **Executive Summary**

Congress passed Public Law (PL) 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006. While this legislation provided a number of benefits for veterans; what's of particular importance for the purposes of this hearing today, is that Title V, Sections 502 and 503 of this legislation, authorized a unique "Veterans First" approach to VA contracting. This approach has changed the priorities for contracting preferences within the Department of Veterans Affairs (VA), by placing Service-Disabled Veteran Owned Small Businesses (SDVOSBs) and Veteran Owned Small Businesses (VOSBs) first and second, respectively, in satisfying VA's acquisition goals as set by the Secretary of the VA.

In so doing, it requires that certain conditions must be met. All SDVOSBs and VOSBs, must submit an application to be 'VERIFIED' by the VA's **Center for Veterans Enterprise (CVE)**, to be eligible for award of a contract exclusively within the Department of Veterans Affairs and to be registered in the VA's Vendor Information Pages (VIP), aka Veterans Small Business Database, available at [www.VetBiz.gov](http://www.VetBiz.gov).

Unfortunately, it's this Verification Process established by the VA and codified in regulations **38 CFR 74** that is being used to determine a Veteran's status, ownership and control of their company that is causing

Literally thousands of veteran and service-disabled veteran business owners to be deprived of millions of dollars in contracting opportunities that could benefit them, their families, and their communities.

In the last year, CVE's requirements, criteria, process and standards have begun to be more transparent. While this visibility has been insightful, CVE's own statistics show that nearly 60% of all veteran business owners applying for verification are being denied. It has become apparent that either the regulations are fundamentally flawed, or that the adjudication process is out of control.

### **VIETNAM VETERANS OF AMERICA**

#### **Funding Statement**

**August 2, 2012**

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For Further Information, Contact: Executive Director of Policy and Government Affairs, Vietnam Veterans of America, (301) 585-4000, extension 127.

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#### **Prepared Statement of Scott F. Denniston**

Chairman Johnson, Chairman Stutzman, Ranking Member Donnelly, Ranking Member Braley, Members of the Committee and Staff. Thank you for the opportunity to submit this statement for the record and thank you for holding this vital hearing on an issue so important to the health and welfare of veteran and service disabled veteran owned small businesses in the United States.

My name is Scott Denniston and I am the Executive Director of the National Veterans Small Business Coalition (NVSBC). The NVSBC is a 501(c) (6) not for profit trade association registered in the District of Columbia. We are over 100 members strong with 6 corporate sponsors. There are three requirements to become a member of the NVSBC: 1) must be a veteran 2) must own and control a small business, and 3) the Federal market must be your primary market. In operation for two years now, we established the Coalition for the purpose of being the "honest broker" between Federal agencies, large business prime contractors and the veteran small business community. Our mission is to transition veterans into business owners servicing the federal government. Our vision is to ensure that veteran businesses are given first consideration for federal prime and subcontracting procurement opportunities because these owners continue to serve their country, putting the security of the United States above all else.

As way of background, I had the honor and privilege of serving as the VA's Director of Small Business Programs for 20 years retiring in January 2009. In January 2001, after the passage of PL 106-50, VA formed the Center for Veterans Enterprise (CVE) with 6 incredibly dedicated and knowledgeable employees. The CVE office was dedicated to assisting veteran owned small businesses break into the Federal market. Between the enactment of Public Law (PL) 106-50 in August 1999, whose purpose was to expand existing and establish new assistance programs for veterans who own and operate small businesses, to enactment of PL 109-461 in December 2006, which established the provision requiring the Secretary of the VA to "verify" veteran and service connected disabled veteran firms for ownership and control, the Center for Veterans Enterprises' mission has changed significantly. Once the go to organization within VA for a veteran-owned small business to seek support and assistance in obtaining contracts, it has now been conflicted with the job of fraud prevention control through the establishment of a different mission. As you know, VA's Office of Small Business Programs, including the CVE is funded by VA's Supply Fund. Prior to my departure a plan was presented and approved to more than double the funding for CVE, including contractor support to manage the new requirements placed on CVE by PL 109-461. Unfortunately it was more than 2 years after my departure before CVE was able to implement the plan.

This hearing is entitled the "Odyssey of the CVE". Figuratively, an odyssey is any difficult, prolonged journey. The CVE is truly an odyssey as evidenced by events which have occurred since the passage of PL109-41, six years ago. CVE has had a turnover of leadership 3 times; been fraught with fostering too many verification approvals resulting in a high percentage of fraud; is now considered to be too restrictive where 'denials' are their first response; where IT systems have been inadequate and unreliable; is now dealing with large volumes of backlog; is responding to GAO Audits, Interagency Task Forces established through the President's Executive Order 13450, and other such directives. All of these challenges inject risk into the success of any program and we need to stop, identify risk mitigation strategies and then implement them, keeping in mind that none of them should detract from the Small Business Program of helping veterans who own and operate small businesses do business with the federal government.

As an organization for which we pride ourselves on being the veterans advocate and mediator between small businesses and the government, we'd like to start by identifying a few of CVE's successes since its inception. CVE continues to solicit for additional resources to support the program and have increased their staff (both federal employees and contractor support) significantly. The CVE's actions have resulted in fewer misrepresented VOSB or SDVOSB firms being awarded contracts due to their small business status and those that are found have disciplinary action taken up to and including debarment. The CVE has verified 6,124 VOSB and SDVOSB firms as of July 29, 2012 according to their Vendor Information page.

Unfortunately, the complaints from the veteran community have now shifted from contract awards going to misrepresented firms to the onerous and unpredictable verification process itself. We believe this is a fundamentally flawed process when half of all veterans are denied by an organization whose mission is "to care for him whom bore the battle". We have seen firsthand the consequences of CVE's actions on veteran business owners including the loss of contracts and businesses closing their doors as a result of failure to obtain CVE verification.

In December 2011, the Executive Director of Small Business Programs at VA approached the NVSBC to become a "partner" in the verification process. His vision was to identify not for profit organizations to be trained by CVE and then to assist veterans become verified. The Board of NVSBC was not fully supportive of this idea due to the lack of verification consistency by CVE in the veteran small business community. After much deliberation and believing the process to be so onerous to veterans and our mission of making veteran small business owners successful in the

Federal marketplace, we accepted CVE's offer. We did however make certain requests which we believed critical to our success in helping veterans:

1. Training of NVSBC representatives and CVE and contractor staff involved in the process.
2. A specific CVE staff member to be available to answer questions regarding the process, regulations, interpretations and status of applicants we assisted.
3. Ability to be recognized as a representative for applicants.
4. Advanced notice of pending denials of applicants we assisted.
5. Priority processing of applicants we assisted.
6. Names of all firms rejected in the past year.
7. Regular meetings with CVE staff to discuss improvements to the process.

NVSBC believes the greatest weakness in the CVE verification process is the lack of communications with veteran applicants. When the provisions of PL 111-275 were implemented in January 2011 there was no communications with the veteran small business community that the requirements had changed. Once veterans submit their applications there is no communication as to the status or process or whether the application is complete. Veterans have no idea whether a VA employee or contractor are reviewing their application. The first communication from VA in many instances is the letter of denial. Many times the reasons for denial could be corrected with a simple email or phone call to the veteran giving them an opportunity to correct the issue. If the veteran is denied then the process starts anew with the request for reconsideration.

The second area of weakness in the CVE verification process is the restrictive rules implemented by VA as a result of PL 111-275. We understand the need as identified by GAO and VA's IG to insure only eligible veterans receive the benefits of the "Veterans First" contracting program but we strongly disagree with VA's punishing legitimate veteran small business owners. It does not appear to us that VA had anyone involved in writing the rules who understands how small businesses operate in the digital age. How does one define "full time"? Why must a veteran be physically present 8 hours, 5 days a week to "manage" a small business? We also disagree with denying a veteran for something that may happen in the future such as "rights of first refusal" and issues in community property states. If ownership changes happen the veteran is obligated to notify VA immediately and may no longer be eligible.

The next issue we have is VA's inconsistent interpretation of the rules. Many veterans because of their service to their country, lack years of business experience and consequently are denied as CVE opines they do not have the background to control their business. As we review cases we can find no set standard as to what constitutes adequate experience to control a business. CVE staff says this is a subjective decision.

Another serious issue is CVE staff not understanding basic business principles and what questions to ask or how to ask these questions. In the last week we have heard from several veterans who own and control corporations with Articles of Incorporation, By-Laws, Stock Ledgers, etc. Even though most states do not require operating agreements each of the veterans we heard from tell us that CVE requires "Operating Agreements" in order to be verified and if the operating agreement is not provided, the verification process will be halted and the veteran will have his/her application withdrawn.

38CFR 44 defines control as the day-to-day management of the company. In the definitions, 38CFR clearly defines day-to-day management as "Day-to-day management means supervising the executive team, formulating sound policies and setting strategic direction". The definition of Day-to-day operations is also clear; "Day-to-day operations means the marketing, production, sales, and administrative functions of the firm". CVE staff does not appear to understand functions/duties of officers/directors of small businesses and how they relate to issues of control versus issues of operations. Consequently CVE many times asks for documentation from veterans that are not relevant to the control of the business or that are excessively and/or inappropriately intrusive into the veteran's personal life.

The CVE verification process is not beyond repair and we believe vitally necessary to ensure veterans receive the benefits of our economic system they fought to defend. We believe the following recommendations if implemented, would significantly improve the CVE verification process:

1. In-depth development of standard operating procedures by which verification will be conducted by business entity (e.g. S-corp, C-corp, LLC., etc.) training of CVE and contractor staffs on basic business management principals. It is vital for CVE and contractor staff to understand business basics, provide guidance

- to veterans, and understand what's necessary to have a robust verification application and program.
2. Open lines of communications with veteran applicants thru emails, phone calls and hands on collaborative philosophy. CVE too often treats the veteran as the enemy rather than as a client.
  3. Assign a case worker to every application and inform the veteran as to who that person is and their responsibilities.
  4. Establish a "Management Review Board" to :
    - a. Vet all applications prior to denial and
    - b. Review requests for additional documentation to assure there is a statutory or regulatory basis for the request, that is relevant to determining control or ownership and that it is not burdensome to veterans.
  5. Provide veteran applicants an opportunity to take corrective action before issuing a denial letter.
  6. At the recent veteran business conference in Detroit Secretary Shinseki announced a committee to review and determine how the verification rules could be improved. VA should invite veteran small business owners and stakeholders to be part of the process.
  7. Establish a VA Veteran Business Advisory Committee to review processes, procedures, rules, policies and their implementation as it relates to "Veterans First" to make recommendations to the Secretary for improvements.
  8. Institute a "Grace Period" whereby firms who have been previously verified as veteran or service disabled veteran owned and controlled remain "verified" until such time as CVE has an opportunity to perform an in-depth review so legitimate veteran or service disabled veteran owned are not denied pending contract opportunities while in a state of uncertainty.

Section 101 of Public Law 106-50, the foundation for all we are addressing today says: " the United States has done too little to assist veterans, particularly service disabled veterans, in playing a greater role in the economy of the United States by forming and expanding small business enterprises" and further states "The United States must provide additional assistance and support to veterans to better equip them to form and expand small businesses, thereby enabling them to realize the American dream they fought to protect." It seems VA and particularly CVE have forgotten this charge through restrictive and inconsistent rules and interpretations, lack of communications with veterans, and disregarding the fact our livelihoods and basic wellbeing rest on their decisions.

In your letter of invitation for this hearing you asked NVSBC to include our opinion on whether VA should use the Small Business Administration's regulations defining ownership and control of a small business, what documents should be required for certification, and how often a business should be re-certified. The advantage of SBA's regulations is a body of case law and decisions which allow veterans and their advocates to understand the basis of decisions. What is more important is SBA regulations are consistent and provide a basis for clear implementation which is lacking at VA today. A process that requires most veteran to seek assistance and pay upwards of \$10,000 to submit an application is erroneous and burdensome, particularly when half of all veterans are denied verification. We suggest a committee, including knowledge business experts address the issue of required documentation. As VA's regulations require notification anytime a change in ownership or control takes place certification/verification should be good for at least 3 years. VA has the ability and capacity to do spot checks of at risk businesses if necessary.

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### **Submission For The Record**

**Mr. James F. McDonnell**

James F. McDonnell  
 Chairman & CEO  
 Trinity Applied Strategies Corporation  
 301 North Fairfax Street, Suite 206  
 Alexandria, Virginia 22314

July 18, 2012

For the Committee,

*This letter is provided for the record in lieu of testimony for the hearing to be held on or about 2 August 2012 to discuss the SDVOSB/VOSB certification process.*

I am writing you as a service-disabled veteran small business owner that has been done a disservice by the Department of Veterans Affairs (VA). Specifically, the VA's Center for Veteran's Enterprise (CVE) has denied my company the right to be registered in the VA Vetbiz Vendor Information Pages (VIP) Verification Program. The VA's decision is a **denial of benefits** and there finding is not based on fact, includes allegations that are untrue and they provide no mechanism for appeal to any higher authority.

The VA Benefits Web Site includes business assistance as one of the benefits offered to veterans. Unfortunately the VA is not managing this program as an assistance program; rather they have taken an adversarial approach. The VIP Verification Program is a benefit for veterans in that it allows for access to preferential contracting for veteran owned businesses. The VA should be assisting Veteran's and their companies with becoming registered in this program instead of focusing on punishing small business by using the weight of their bureaucracy as a hammer.

My company, Trinity Applied Strategies Corporation (TAS-Corp) first applied online for the program in February of 2011. We did not receive a response until June 1, 2011 and on that date we were asked to submit around **300 pages of documents** within a seven day time period. The CVE gave us until June 7, 2011 to submit these documents or our application would be removed from the system. Now, while my company was able to gather these documents within this time frame it was not without a great cost to the company, three employees were pulled off of other projects to gather the documentation for the application. A program that is promoted as a "benefit" for Veterans should not place such unnecessary burdens on the Veteran during the application process. Additionally, on its face *this 7 day requirement seems to conflict with federal law which mandates 60 days be allowed for the submission of requested documents.*

TAS-Corp submitted the required paperwork by the June 7, 2011 deadline. On August 8, 2011 TAS-Corp received an un-signed letter from Gail Wegner that was stamped with the date of July 15, 2011; this letter denied TAS-Corp from inclusion to the VIP Verification Program. The reason for the denial was that the CVE determined that TAS-Corp could not prove that the Service-Disabled Veteran, myself, controlled and managed the business. We disagreed with this determination and felt that it was a misunderstanding of how our by-laws are written. I attempted to contact Ms. Wegner and was told that she no longer worked for the VA and had left a while ago (Pre-dating the letter we received with her name on it). Eventually, I was able to speak with David Eckenrode (Acting Deputy Director of the Center for Veterans Enterprise) and attempted to request a meeting with the VA to explain how our board was organized and demonstrate my control of the company. A meeting was never achieved but in my conversations with Mr. Eckenrode he seemed to understand that this was simply a junior analyst who reviewed our documents not understanding corporate structure and that we would easily be able to clear up the issue. I requested a properly signed letter be issued to TAS-Corp and Mr. Eckenrode agreed and identified that our time to appeal of thirty days would run from the date of the new letter.

I was also able to speak with Tom Leney (Executive Director of Small and Veterans Business Programs) and I realized that he has a very different view of what his office should be doing. He indicated that the role of the office (CVE) is no longer "assistance", rather it is a regulatory function whose primary mission is to prevent companies that cannot prove eligibility from being in their database. I understood from our discussion that he, and his staff, would like to be in the assistance business but their understanding of their mission is to be the regulatory enforcer. Mr. Leney also told me that when you seek a second review (i.e. question any of their findings) the CVE goes through the entire package again so (as in this case), I questioned their finding and they added another one. Instead of seeking to help the veteran address the original issue and submit evidence of it being corrected, the VA process requires another complete review (of items already reviewed and found acceptable). Mr. Leney consistently blamed "the regulation" that VA issued for the problems and felt his hands were tied when it comes to improving the process. I reminded him that the regulation came from his office and if he knew it was flawed he was obligated to fix it, he did not agree with my assessment.

A new letter from the VA was issued on August 25, 2011 and contained their original finding regarding control and management and added an additional finding of outside employment that also prevented me from "controlling" TAS-Corp. The new letter concludes that I am a full time employee of my consulting firm (McDon-

nell Consulting Group), however there is no evidence of that ... in fact the only evidence they had from our original filing on June 7, 2011 was TAS-Corp payroll records (which show me being paid for full time work) and my personal taxes. I am now, and have been, a full time employee of TAS-Corp, *their allegation to the contrary is false and unsubstantiated.*

In response to their new letter of August 25, 2011 I submitted a response letter with **over 70 pages** of additional documents. In this submission we provided new board of director resolutions that 1) reduced our board of directors to one individual, myself; 2) prevented any officer of the company from enacting any policy that restricts my control of TAS-Corp, and 3) a resolution clarifying my title as CEO and Chairman of TAS-Corp. In addition to the board resolutions and in order to address the outside employment concern of the CVE I submitted time accounting records for 2009, 2010, and through the current time period in 2011 that showed my full-time employment with TAS-Corp. I also included my W-2 showing my full-time salary from TAS-Corp and an explanation detailing that the sole source of McDonnell Consulting Group's revenue is from my payments as Chairman of the Board of TAS-Corp. Additionally, another Board Resolution was included which requires the CEO to be employed full-time and restricts outside activity. **This packet was a comprehensive response to every concern that the CVE listed in its revised August 25, 2011 letter.**

As of November 2011 we had received no communication from the CVE regarding our response, on November 8, 2011 we were told that we would receive a response on or about December 7, 2011. On December 21, 2011 I received an email from an Amanda Abbey a paralegal contractor for the CVE identifying that "the Examiner expressed a need to obtain the original documents that was part of your company's initial verification application or 0877 application. Is it possible for you to forward the documents to me by e-mail?" This email was surprising for any number of reasons including that it seems they were only **just getting around to reviewing my submission more than 110 days later. However my main concern, and my response to the email, was to ask "What happened to the documents that we originally submitted? Were they lost, misplaced, etc."**

A substantial amount of business sensitive information was included in these documents. In my response I asked for clarification as to what she was requesting and an explanation for the missing documents. Ms. Abbey responded "The Center for Veterans Enterprise has your tax documents. However, CVE does not have additional relevant information needed to make a determination on your Request for Reconsideration. The CVE Examiner has asked for the following: Bylaws, Articles of Incorporation, Résumés for the Vet and owners of more than 20% of the concern, and Stock Certificates/ledger." All of this information was sent previously to the CVE, in fact they even cited their review of these documents in their letters denying our registration into the VetBiz VIP Program. At this time I again tried to engage Mr. Leney and Mr. Eckenrode I sent both emails attempting to find out how my documents are missing and why. Mr. Leney failed to respond and Mr. Eckenrode initially repeated the request that these documents were needed until I pointed out to him that their letter actually cites reviewing these records. **We were never given a reason that the documents were asked to be resent and finally on January 18, 2012 we received another letter denying TAS-Corp's registration into the VetBiz system. In summary, the documents were never missing ... they were not truthful about that and it is my opinion they simply said they were missing in order to shift blame for the delay to me.**

In their most recent letter of January 18, 2012 the VA, through CVE, agreed that my board resolutions confirm that I am the sole director but still found that "my managerial responsibilities with McDonnell Consulting Group (MCG) prevent me from devoting sustained and significant amount of time in the concern." Nowhere in the CVE's three page letter do they address the 70 pages worth of documents that I submitted showing my full-time employment with TAS-Corp and identifying that the only income my consulting company has is from my chairman of the board payments from TAS-Corp. This accusation is a flat out lie, I come to work in my TAS-Corp office every day and **they have abused their position of public trust** by in effect accusing me of fraud through misrepresenting my employment status.

Finally, in addition to ignoring the documentation that I submitted the CVE issued instructions preventing my company from submitting a new application until six months' time had elapsed. Only on May 9, 2012 was my company eligible to once again submit to this process. **The law gives the VA no punitive authority; they have created it for themselves.**

I hope this letter properly describes the substantial time and effort that this Service-Disabled Veteran-Owned Small business has put into this application for inclusion into a database that is supposed to be a benefit for veteran small business own-

ers. As you can see from the description above this process is broken. How many other less sophisticated or not as financially stable veteran-owned companies are being kept out of a database that was created for them and should be an aid to developing their business?

I agree 100% that there should be certain qualifications that any business wishing to be listed in the database must satisfy, but the CVE shouldn't be flat denying businesses that don't initially meet these requirements on paper. Why can't the CVE perform a review and if the company is deficient identify the documents that they would need to submit to be approved? The VA, and specifically the CVE, *should never be in the position of acting as a regulator of the veterans that have served this country.* The VA and CVE should act as a facilitator of the success of veterans. The CVE should be assisting veteran owned businesses with entry into the VetBiz VIP Program not doing everything in their power to keep them out. I hope that you will direct the VA's Center for Veteran Enterprise to review not just the application of my company but the overall process for veteran-owned businesses in general. I am happy to meet with members, staff, the VA, or any interested party and explain what my company went through and what I think we can do to fix this process.

I attempted to meet with the Secretary, the Deputy Secretary; the Secretary's Director of Client Relations and was rebuffed at every turn. I began my discussions with the VA naively thinking this was an oversight by senior leadership and that once they understood the issue they would immediately fix it. I have been an SES in two agencies and looked at this as an issue that was low hanging fruit for improvement. That being said, *the VA seems to be comfortable having an office that is penalizing small businesses, denying benefits without due process and empowered to issue official government findings that are incorrect.* I would like to believe that Secretary Shinseki would do the right thing if he were aware of what his staff was doing but he either condones this or it is being hidden from him. Since starting this effort a year ago I have come to the unfortunate conclusion that he must be aware of the issue and has chosen to ignore it.

It is ironic, that during a period in which other agencies such as DHS, DOD, DOS and DOE are expanding their support of veteran owned small businesses the one agency that is funded specifically to assist veterans is making it difficult to run a business. We have spent thousands of dollars in wasted labor, submitted hundreds of pages of documents and spent additional money in legal fees to resolve this issue and the VA has done nothing to assist. Alternatively, when I had a concern at DHS some time back I asked for a meeting with the Chief Procurement Officer and he graciously met and then handed me off to the head of their office of small business utilization ... who I've called for advice on several occasions and has been open and provided guidance and assistance. I have had similar experiences with DOS and DOE which demonstrates that this adversarial and harmful role that the VA has taken on is not government wide.

Finally, it seems inconsistent that the head of CVE not be someone who has owned a business, the person at the top of this process shouldn't be a guy who has never been in my shoes. He's never put all his personal wealth into a company, created jobs (30 so far including 13 veterans), and had to explain to his wife that if the company fails our house could be taken. Starting and running a small business is stressful enough without having government employees paid to assist me feeling free to lie and manipulate a system to make it more difficult to do business.

We have not, and do not intend to submit another package to the same people at the VA. They have proven themselves to be untrustworthy, willing to "move the goalpost", misrepresent facts and create their own rules. They have no appeal process and until there is a change I feel it is simply a waste of time to deal with them. We submitted a FOIA request on March 6th to prepare for legal action but the VA has not been forthcoming with documents (probably violating another law they are supposed to follow but choose not to).

I thank you for your time and attention to this matter. I have attached a list of potential legislative remedies for your consideration.

Sincerely,

James F. McDonnell  
Chairman & CEO  
Trinity Applied Strategies Corporation

**LEGISLATIVE INITIATIVES TO ASSIST SDVOSB/VOSB**

1. Clarify that the VIP Database inclusion and preferred contracting status is a defined veteran's benefit.
  - a. Direct the VA to manage this process as provision of, or denial of, a benefit; mandate local VA office assistance for submittal and review with approval of the benefit at the local level and any denial elevated to HQ; authorize use of United States Court of Appeals for Veterans Claims to resolve disputes.
  - b. Direct that the VA cannot issue blanket denials, rather that they must provide and "interim approval" with guidance on how to become permanently eligible and provide the veteran assistance in submitting paperwork.
    - i. All "interim approvals" should provide a 90 day window in which the business is listed in the VIP database while the veteran provides any specific additional information,
    - ii. If the veteran requests an appointment to discuss the interim decision the VA must meet with the veteran to seek to approve the request for benefits. The 90 day period shall begin on the date of the face-to-face meeting to prevent the veteran from being penalized for VA delays. The VA representative shall, at the time of the meeting take one of the following actions:
      1. Approve the benefit
      2. Identify shortfalls and provide guidance to the veteran and schedule a follow-on meeting for approval
      3. Advise the veteran that the package will be forwarded to HQ for a denial of benefits review if requirements cannot be met within 90 days.
    - iii. If the VA believes a submission was fraudulent the package shall be forwarded to the US Attorney for review and consideration for civil or criminal penalties.
  2. Direct that the Director and Deputy Director of CVE be Limited Term SES Appointments (a position in which new directors rotate in from the private sector every 2-3 years) and meet the following requirements: (the incumbents would not qualify for this role)
    - a. Have owned and controlled as SDVOSB/VOSB for a minimum of 5 years.
    - b. That company must have provided products or services to the federal government as a prime contractor.
    - c. The company must have had a minimum of 15 full time employees for at least 3 of the 5 years.
    - d. Shall be a veteran with honorable discharge or retirement.
  3. Direct that only the Director of CVE may recommend a company for denial of benefits and that the Deputy Secretary must personally review and sign any denial letters. (This action is similar to actions that would destroy a military career and should have the same weight as a DOD action against a service member).
  4. Direct the VA to forward to the SBA any approved company that is owned by a disabled veterans (above 30% disabled) for inclusion in the 8a program.
    - a. Amend 8a statute to include SDVOSB where the owner is >30% disabled

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**Questions For The Record**

**Letter and Questions From: Hon. Joe Donnelly, Ranking Democratic Member, Subcommittee on Oversight and Investigations To: Hon: Eric K. Shinseki, Secretary, Department of Veterans Affairs**

August 3, 2012

The Honorable Eric K. Shinseki  
 Secretary  
 Department of Veterans Affairs  
 810 Vermont Ave., NW  
 Washington, DC 20420

Dear Secretary Shinseki:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations and Subcommittee on Economic Opportunity joint oversight hearing titled *Odyssey of the CVE* on August 2, 2012. Please answer the enclosed hearing questions by no later than Friday, September 14, 2012.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all full committee and subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres-Jaen at [orfa.torres-jaen@mail.house.gov](mailto:orfa.torres-jaen@mail.house.gov), and fax at (202) 225-2034. If you have any questions, please call (202) 225-9756.

Sincerely,

Joe Donnelly  
Ranking Member  
Subcommittee on Oversight and Investigations

DMT/ot

Questions for the Record from the Committee on Veterans' Affairs  
Subcommittee on Oversight and Investigations and  
Subcommittee on Economic Opportunity  
U.S. House of Representatives

**Odyssey of the CVE**

**August 2, 2012**

1. Having enough of the right people in place is critical for the Department to set up a strong verification program. Although some of the challenges VA faces are system related, other challenges relate to government and contract staff that oversee and manage the verification program at VA.

a. What is the fiscal year 2012 and 2013 projected budget for the entire verification program

b. Could you break down the number of people supported by your budget including how many government and contract employees currently work for CVE and are projected for fiscal year 2013?

c. At our November 2011 hearing you testified that all CVE staff will get the training and obtain a Certified Fraud Examiner certification. Can you tell us as of the hearing today, how many of the CVE staff are Certified Fraud Examiners?

d. Do you believe you have staff including contractors with the necessary experience to recognize fraud and abuse?

2. What do you believe the primary goal of the CVE should be, making it easier for firms to sign up or preventing fraud?

3. Do you believe that the duties of CVE should be split into two operations – one verifying eligibility and one assisting veteran small business owners obtain contracts?

4. Does VA have the legal authority to rescind an awarded contract to an ineligible firm? Out of the total number of contracts awarded to firms subsequently found to be ineligible, how many have been rescinded?

5. Should VA focus more its efforts on firms that have a contract or will be awarded a contract?

6. Do you have any firms that are listed in the CVE database that self-certified?

7. What did VA do to improve records management and document control?

8. In your testimony you mentioned that "VA has addressed the issues in the GAO report." Are you referring to the 13 recommendations GAO made in 2011?

a. According to GAO you have only completed six of the 13 recommendations. Can you explain why you believe you have addressed all the recommendations while GAO believes only six have been completed?

9. According to a recent meeting with Roger Baker, Assistant Secretary for Information and Technology, CVE's Verification Case Management System (VCMS) will undergo major enhancements. How will the VCMS system change and by when do you expect this to be completed?

10. What is the projected budget for the Verification Case Management System update?

- a. Has funding been allocated for this project?
- b. Where does this funding come from?

11. With the tools the VA has made available on VetBiz, such as the Verification Assistance Briefs, to help veteran owned small businesses understand the application process, have you noticed an increased number of verified applicants?

12. What were the policy decisions underlying VA's decision to extend the time period before re-verification was necessary to two years?

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**Responses From: Hon: Eric K. Shinseki, Secretary, Department of Veterans Affairs To: Hon. Joe Donnelly, Ranking Democratic Member, Subcommittee on Oversight and Investigations**

**FINAL PASSBACK  
QUESTIONS FOR THE RECORD  
HVAC SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION  
AUGUST 2, 2012  
QUESTIONS FROM RANKING MEMBER JOE DONNELLY (D-IN-2)**

**Question 1: Having enough of the right people in place is critical for the Department to set up a strong verification program. Although some of the challenges VA faces are system related, other challenges relate to government and contract staff that oversee and manage the verification program at VA.**

**a. What is the fiscal year 2012 and 2013 projected budget for the entire verification program?**

**VA Response:** The budget for Fiscal Year (FY) 2012 is \$24.2 million. In June 2012, the Secretary directed that a Senior Executive Task Force be stood up to examine the Verification Program and make recommendations on various issues to include staffing and infrastructure. The estimated budget for FY 2013 has not been finalized, pending the results of the Task Force report. The higher budget in FY 2012 is due to budgeting for a replacement system to the Verification Case Management System (VCMS). As the VCMS dollars will not be obligated in FY 2012, this money will be moved to the FY 2013 budget.

**b. Could you break down the number of people supported by your budget including how many government and contract employees currently work for CVE and are projected for fiscal year 2013?**

**VA Response:** In FY 2012, The Center for Veterans Enterprise (CVE) has 24 government employees and 152 contract employees. For FY 2013 CVE projects that there will be 24 government employees and 191 contract employees. The difference in the budgeted amount from one year to the next is due to a one-time expenditure on a new case management system. That funding is now being moved to FY 2013, as the new system was not obligated in FY 2012.

**c. At our November 2011 hearing you testified that all CVE staff will get the training and obtain a Certified Fraud Examiner certification. Can you tell us as of the hearing today, how many of the CVE staff are Certified Fraud Examiners?**

**VA Response:** Certified Fraud Examiner Training is a one week residential course. To date, two federal employees have completed Certified Fraud Examiner Training. However, three more employees finished certification training in September 2012 and an additional three are scheduled in October 2012. All nine eligible employees will be certified by March 2013. Training has been delayed due to turnover and the number of manual procedures needed to complete the verification process. Pulling staff at critical times would have slowed production. With the newly re-engineered verification process in place, CVE is now able to send more staff to the training. CVE seeks to maintain a full complement of certified eligible staff of nine.

In the event of staff turnover, new employees eligible for CFE training will be scheduled for training after arrival.

**d. Do you believe you have staff including contractors with the necessary experience to recognize fraud and abuse?**

**VA Response:** CVE believes that it has the staff to recognize fraud and abuse. CVE leadership is cognizant that fraud awareness is an important component of the verification process and CVE conducts monthly training on this topic for all employees.

**Question 2: What do you believe the primary goal of the CVE should be, making it easier for firms to sign up or preventing fraud?**

**VA Response:** CVE's current mission is an audit function which primarily focuses on ensuring a firm's compliance with 38 Code of Federal Regulations (CFR) Part 74. There is a balance that needs to be reached between making it easier for firms to be verified and preventing fraud. To assist with verification, VA's Office of Small and Disadvantaged Business Utilization (OSDBU) has developed a Verification Assistance Program to help Veterans understand verification policy and the verification process through coaching and counseling. The goal of the program is to reduce the risk of denial due to lack of understanding and misinterpretation of the regulation.

**Question 3: Do you believe that the duties of CVE should be split into two operations – one verifying eligibility and one assisting veteran small business owners obtain contracts?**

**VA Response:** VA's OSDBU is already split into two operations: the CVE and the Center for Small Business Utilization (CSBU). The advocacy mission previously held by CVE has been transferred to CSBU. We have now developed a Strategic Outreach team to focus on assisting Veteran small business owners with obtaining the education to contract with the Federal government.

**Question 4: Does VA have the legal authority to rescind an awarded contract to an ineligible firm? Out of the total number of contracts awarded to firms subsequently found to be ineligible, how many have been rescinded?**

**VA Response:** Yes, VA has the legal authority to rescind an awarded contract on a Service-Disabled Veteran-Owned Small Business (SDVOSB)/Veteran-Owned Small Business (VOSB) set-aside acquisition if the awardee is determined to be other than an eligible SDVOSB/VOSB in a status protest. A contract may be deemed void ab initio if the illegality of the contract is plain and palpable. An award is plain and palpably illegal if the award was made contrary to statutory or regulatory requirements because of some action by the contractor, not the government. In a SDVOSB/VOSB set-aside, the contractor represents its status as a SDVOSB/VOSB. If that status is challenged and cannot be supported, the contractor, not the government, created that illegality. The action is illegal because, pursuant to a SDVOSB/VOSB set-aside, offers are only solicited from and award may on be made to a properly eligible SDVOSB/VOSB. See *J.E.T.S., Inc. v. United States*, 838 F.2d 1196, 1200 (Fed. Cir.), cert. denied, 486 U.S. 1057 (1988) (contractor obtained contract by falsely stating that it was a small business and a government contract thus tainted from its inception by fraud is void ab initio).

Since December 2009, VA has determined 9 contracts to be *void ab initio*.

**Question 5: Should VA focus more its efforts on firms that have a contract or will be awarded a contract?**

**VA Response:** Currently, CVE has a Class Deviation "Fast Track" program for VOSBs that were previously verified but require recertification. Although these companies may continue to submit proposals for VA Veterans First set-aside contracts while in the process of reverification, they are not eligible to receive an award until their re-verification is complete and the firm is verified. If a VA contracting officer identifies a company that is in reverification (not reconsideration) that is the apparently successful offeror on a VA set-aside contract, that company is "Fast Tracked" to a decision within 21 business days. Firms that currently have contracts are subject to random or risk-based post verification audits in the form of unannounced site visits.

**Question 6: Do you have any firms that are listed in the CVE database that self-certified?**

**VA Response:** No.

**Question 7: What did VA do to improve records management and document control?**

**VA Response:** In May 2011, the CVE VCMS added the capability to receive and manage all documents submitted by Veteran business owners for verification. Documents are submitted via secure internet transfer. This improved capability allows CVE to maintain all verification related documents in one repository. It is CVE policy that all communications and verification actions are documented in VCMS as of February 5, 2012.

**Question 8: In your testimony you mentioned that “VA has addressed the issues in the GAO report.” Are you referring to the 13 recommendations GAO made in 2011?**

**VA Response:** The testimony referred to both the 13 recommendations of the July 2011 report, “Service-Disabled Veteran-Owned Small Business Program: Preliminary Information on Actions Taken by Agencies to Address Fraud and Abuse and Remaining Vulnerabilities” (GAO-12-152R), as well as the three recommendations in the July 2012 draft report and August 2012 final report, “Service-Disabled Veteran-Owned Small Business Program: Vulnerability to Fraud and Abuse Remains” (GAO-12-697).

**a. According to GAO you have only completed six of the 13 recommendations. Can you explain why you believe you have addressed all the recommendations while GAO believes only six have been completed?**

**VA Response:** VA has taken steps to complete all 13 of the recommendations raised in the July 2011 GAO final report, “Service-Disabled Veteran-Owned Small Business Program: Preliminary Information on Actions Taken by Agencies to Address Fraud and Abuse and Remaining Vulnerabilities” (GAO-12-152R). In VA’s July 19, 2012, response to GAO’s draft report “Service-Disabled Veteran-Owned Small Business Program: Vulnerability to Fraud and Abuse Remains” (GAO-12-697; Attachment A), VA also provided an update on the seven remaining open recommendations (numbers 1, 6, 8, 9, 11, 12, and 13) from the July 2011 final report. In addition, VA’s response to the July 19th report (see pp. 14–17, starting with “Page 18, Bullet one”), included documentation on the remaining recommendation, and noted that five of the seven actions would [?] be closed (i.e, numbers 1, 9, 11, 12 and 13). VA continues to negotiate with GAO and take proactive steps to resolve and close the remaining two recommendations.

VA is currently reviewing the August 2012 final report and is developing its response to the three recommendations in the report. Previously in the draft report, VA concurred with two recommendations and concurred in principle with one recommendation (see Attachment A).

**Question 9: According to a recent meeting with Roger Baker, Assistant Secretary for Information and Technology, CVE’s Verification Case Management System (VCMS) will undergo major enhancements. How will VCMS system change and by when do you expect this to be completed?**

**VA Response:** Although VCMS is a substantial step forward from previous manual systems, it has proven insufficient to handle the current business process or to obtain aggregate reporting to easily track program progress. The current system is based on 2008/2009 business requirements. However, the next generation of VCMS will be a product developed with and by the Office of Information and Technology. It will automate many current manual processes and integrate communications aspects associated with the program. We expect to roll out the first phase of the project within the next nine months.

**Question 10: What is the projected budget for the Verification Case Management System (VCMS) update?**

**VA Response:** VA cannot project the entire budget for the VCMS update until the analysis of the options that direct the requirements is completed. The analysis is expected to be complete by September 30, 2012, and the dollars will be placed in OSDDBU’s FY 2013 budget.

**a. Has funding been allocated for this project?**

**VA Response:** Yes. VA had originally allocated about \$5 million in the FY 2012 budget for this project. Those funds will be moved to the FY 2013 budget when a better estimate is made from the analysis of the options.

**b. Where does this funding come from?**

**VA Response:** Funding for VCMS comes from CVE's budget, which, in turn, comes from VA's Supply Fund. The Supply Fund supports VA's mission by the operation and maintenance of a supply system, including procurement of supplies, equipment, personal services and the repair and reclamation of used, spent or excess personal property. The primary customer for Supply Fund activities is VA, but the Fund also has significant sales to other Federal agencies, including the Department of Defense and the Department of Health and Human Services.

The statutory authority for the Supply Fund is contained in 38 U.S.C. 8121. Although the Supply Fund has its own authority, there is nothing from a financial accounting and reporting perspective that distinguishes it from other financial operations. The Supply Fund is an integral part of VA's overall financial scheme and is part of the annual process for developing the year-end VA consolidated financial statements with notes.

**Question 11: With the tools the VA has made available on VetBiz, such as the Verification Assistance Briefs, to help Veteran-owned small businesses understand the application process, have you noticed an increased number of verified applicants?**

**VA Response:** Because the self assessment tool and the partnership program were rolled out so recently, VA does not have sufficient data to determine the effectiveness of these tools. Preliminary data would support that there has been an increase in the number of verified firms.

**Question 12: What were the policy decisions underlying VA's decision to extend the time period before reverification was necessary to two years?**

**VA Response:** VA conducted an analysis of the rule and the risk associated with the two year eligibility that led to a balance that would mitigate any risk of extending the period by increasing unannounced spot checks of verified firms. VA feels that the risk is acceptable because the majority of those that are denied are deemed ineligible due to documentation that is not in compliance with the regulation rather than firms attempting to commit fraud. Those that have been approved have documentation that has been shown to be in compliance with the regulation.

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**Letter and Questions From: Hon. Joe Donnelly, Ranking Democratic Member, Subcommittee on Oversight and Investigations To: Hon: Gene L. Dodaro, Comptroller General of the United States, Government Accountability Office**

August 3, 2012

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Mr. Dodaro:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations and Subcommittee on Economic Opportunity joint oversight hearing titled *Odyssey of the CVE* on August 2, 2012. Please answer the enclosed hearing questions by no later than Friday, September 14, 2012.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all full committee and subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres-Jaen at [orfa.torres-jaen@mail.house.gov](mailto:orfa.torres-jaen@mail.house.gov), and fax at (202) 225-2034. If you have any questions, please call (202) 225-9756.

Sincerely,

Joe Donnelly  
Ranking Member

Subcommittee on Oversight and Investigations

DMT/ot

Questions for the Record from the Committee on Veterans' Affairs  
 Subcommittee on Oversight and Investigations and  
 Subcommittee on Economic Opportunity  
 U.S. House of Representatives

**Odyssey of the CVE**

**August 2, 2012**

1. Since 2009, GAO has issued a number of reports or testimonies on the government-wide SDVOSB program, focusing on its vulnerability to fraud and abuse, and agencies' actions to prevent contracts from going to firms that misrepresent themselves as SDVOSBs. What vulnerabilities did you find in the government-wide program?
2. In a July 2011 testimony GAO suggested that Congress consider expanding VA's verification program government-wide to employ more effective fraud-prevention controls over the billions of dollars awarded to SDVOSBs outside of VA. Given the inventory problems identified, is the expansion of the VA's SDVOSB verification program government-wide still a valid recommendation?
3. In your report you recommended VA ensure that all firms within VetBiz have undergone its new more thorough verification process. Specifically, VA should inventory firms listed in VetBiz to establish a reliable beginning point for the verification status of each firm. Can you explain the importance of a reliable inventory of SDVOSB firms for VA and other agencies that may rely on the VetBiz status of a firm?
4. Is the process to get listed on the CVE database more difficult than it needs to be?
5. Should VA model its program more on what SBA is doing?
6. Does the current SDVOSB verification process by VA provide a high level of assurance that only eligible firms are verified?
7. What is more important making easier for firms to be verified or preventing fraud?
8. The VA has only taken action on six of the 13 recommendations you issued in October 2011. Has the VA indicated why they have not completed the remaining seven recommendations?
9. Does CVE have the right funding and staff to carry out its mission?
10. In your opinion, does CVE know how many firms have been verified under the old and new law?
11. What prevents CVE from keeping track of the number of verified firms?
12. In your opinion, did the VA establish a two year re-verification requirement to get rid of the backlog?
13. In your opinion, how often should SDVOSBs be verified?

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**Responses From: Hon. Gene L. Dodaro, Comptroller General of the United States, Government Accountability Office To: Hon. Joe Donnelly, Ranking Democratic Member, Subcommittee on Oversight and Investigations**

September 11, 2012

The Honorable Joe Donnelly  
 Ranking Member  
 Subcommittee on Oversight and Investigations  
 Committee on Veterans' Affairs  
 House of Representatives

Subject: *Service-Disabled Veteran-Owned Small Business Program: Responses to Questions for the Record*

Dear Mr. Donnelly,

On August 2, 2012, I testified in the joint hearing before the House Veterans' Affairs Committee, Subcommittee on Economic Opportunity and Oversight and Investigations on fraud and abuse in the Service-Disabled Veteran-Owned Small Business (SDVOSB) program.<sup>1</sup> This letter responds to your request that I provide answers to questions for the record from the hearing. The responses are generally based on work associated with previously issued SDVOSB products. If you have any questions about this letter or need additional information, please contact me at (202) 512-6722 or [hillmanr@gao.gov](mailto:hillmanr@gao.gov).

Sincerely yours,

Richard J. Hillman  
 Managing Director  
 Forensic Audits and Investigative Service

Enclosures (2)

*Enclosure 1*

**Responses to Questions for the Record  
 Richard Hillman, Managing Director  
 Forensic Audits and Investigative Service, Government Accountability  
 Office**

*Questions from Subcommittee Ranking Member Joe Donnelly*

**1. Since 2009, GAO has issued a number of reports or testimonies on the government-wide SDVOSB program, focusing on its vulnerability to fraud and abuse, and agencies' actions to prevent contracts from going to firms that misrepresent themselves as SDVOSBs. What vulnerabilities did you find in the government-wide program?**

Since 2009 we have continually reported that the SDVOSB program lacks effective government-wide fraud-prevention controls and therefore remains vulnerable to fraud and abuse. Because federal law does not require it, the Small Business Administration (SBA) and agencies awarding contracts (other than VA) do not validate firms' eligibility for the program. Instead, they rely on firms' self-certifying as service-disabled veteran-owned businesses in the Central Contractor Registration (CCR) without requiring supporting documentation. The only means of detecting fraud in the government-wide SDVOSB program involves a formal bid-protest process at SBA, whereby interested parties to a contract award could protest another firm's SDVOSB eligibility or small-business size. Without basic checks on firms' eligibility claims, SBA cannot provide reasonable assurance that only legitimate SDVOSBs are receiving government contracts.

**2. In a July 2011 testimony GAO suggested that Congress consider expanding VA's verification program government-wide to employ more effective fraud-prevention controls over the billions of dollars awarded to SDVOSBs outside of VA. Given the inventory problems identified, is the expansion of the VA's SDVOSB verification program government-wide still a valid recommendation?**

VA's progress toward eliminating the SDVOSB program's vulnerability to fraud and abuse should be considered before expanding its verification program government-wide. We suggested in 2009 that Congress consider providing VA with the authority and resources necessary to expand its SDVOSB eligibility verification process to all contractors seeking to bid on SDVOSB contracts government-wide. Such an action is supported by the fact that VA maintains the database identifying which individuals are service-disabled veterans and is consistent with VA's mission of service to veterans. However, as shown by our current work, VA's program remains vulnerable to fraud and abuse because the agency has been unable to accurately track the status of its verification efforts and because potentially ineligible firms remain listed in VetBiz, VA's database of eligible firms. Consequently, VA's ability to show that its process is successful in reducing the SDVOSBs program's vulnerability to fraud and abuse remains an important factor in any consideration about the potential expansion of VA's eligibility verification process government-wide. GAO has ongoing work that will, in part, examine some of the key issues that need to be addressed if VA's verification program were to be implemented government-wide.

**3. In your report you recommended VA ensure that all firms within VetBiz have undergone its new more thorough verification process. Specifi-**

<sup>1</sup> GAO, *Service-Disabled Veteran-Owned Small Business Program: Vulnerability to Fraud and Abuse Remains*, GAO-12-697T (Washington, D.C.: August 2, 2012)

**cally, VA should inventory firms listed in VetBiz to establish a reliable beginning point for the verification status of each firm. Can you explain the importance of a reliable inventory of SDVOSB firms for VA and other agencies that may rely on the VetBiz status of a firm?**

Without a clear inventory and methods designed to track the verification process firms have undergone, VA cannot provide reasonable assurance that all firms appearing in VetBiz have been verified under VA's more stringent, current verification process as owned and controlled by a veteran or service-disabled veteran. Past audits show the risk of providing SDVOSB contracts to firms reviewed under the less-stringent verification process which VA chose to implement in response to the Veterans Benefits, Health Care, and Information Technology Act of 2006 (2006 Act). For example, in 2011, VA's OIG issued a report that reviewed both SDVOSBs and veteran-owned small businesses (VOSBs) listed in VetBiz and found that 10 of 14 SDVOSBs and VOSBs verified under VA's 2006 Act process and listed as eligible were in fact ineligible for these respective programs. Further, the report went on to state that VA's failure to maintain "accurate and current" information in the VetBiz database also exacerbated problems in the verification process. We remain convinced that the verification process utilized by VA prior to the Veterans Small Business Verification Act (2010 Act) process does not provide reasonable assurance that only eligible SDVOSBs participate in the program. The more-stringent verification process VA implemented in response to the Veterans Small Business Verification Act, part of the Veterans' Benefits Act of 2010, is better designed to prevent ineligible firms from being allowed into the program. For example, two of our most recently reported cases were found ineligible by VA using the 2010 Act verification process. We therefore believe that all firms must be expeditiously verified under the 2010 Act process. By better managing its inventory of firms, maintaining the accuracy of firms' status in VetBiz, and applying the verification process VA implemented in response to the 2010 Act to all firms, VA can be more confident that the billions of dollars meant to provide VA contracting opportunities to our nation's service-disabled veteran entrepreneurs make it to the intended beneficiaries.

**4. Is the process to get listed on the CVE database more difficult than it needs to be?**

We have not directly tested the difficulty of the process to get listed in VetBiz. However, given the specific requirements of the SDVOSB program (e.g. determining ownership and control of a firm, and meeting certain performance levels on contracts), it is important to have a verification program that does more than rely on publicly available documentation. We remain convinced that the verification process utilized by VA prior to the 2010 Act process does not provide reasonable assurance that only eligible SDVOSBs participate in the program. Given this ongoing vulnerability to fraud and abuse, we continue to believe that VA should expeditiously verify current VetBiz firms and new applicants under the 2010 Act verification process.

**5. Should VA model its program more on what SBA is doing?**

Based on our previous and most recent work, we cannot suggest that VA model its program on SBA's actions. As stated in our answer to your first question, SBA lacks effective fraud-prevention controls, leaving the government-wide SDVOSB program vulnerable to fraud and abuse.

We are aware that there are technical differences between VA and SBA regulations for the SDVOSB program, as well as differences in the interpretation of program regulation. To avoid confusion and to better ensure efficient implementation of the program, it would be important to eradicate the differences that exist between VA's and SBA's regulations.

**6. Does the current SDVOSB verification process by VA provide a high level of assurance that only eligible firms are verified?**

Our work was not designed to determine the extent of fraud within the SDVOSB program and cannot answer whether the current verification process provides a high level of assurance that only eligible firms are verified. However, the most effective and most efficient part of a fraud-prevention framework involves the institution of rigorous preventative controls at the beginning of the process. At a minimum, preventive controls for the SDVOSB program should be designed to verify that a firm seeking SDVOSB status is eligible for the program. With regard to VA's program, the 2010 Act requires that no new small-business applicant may appear in VA's SDVOSB and VOSB VetBiz database unless it has been verified by VA as owned and controlled by a veteran or service-disabled veteran. To check veteran status, Center for Veterans Enterprise (CVE) relies in part on VA's Beneficiary Identifica-

tion Records Locator Subsystem, which confirms that owners are documented as having left military service under conditions other than dishonorable and that the disability results from a service-connected condition. In response to the 2010 Act, VA also implemented a verification process that included unannounced and announced site visits, and review and analysis of company documentation. Under the 2010 Act verification process, VA denied two firms that we concluded were ineligible in our most recent work.

Past audits show the risk of providing SDVOSB contracts to firms reviewed under VA's 2006 Act process. For example, in 2011, VA's own OIG issued a report that reviewed both SDVOSBs and VOSBs listed in VetBiz and found that 10 of 14 SDVOSBs and VOSBs verified under VA's 2006 Act process and listed as eligible were in fact ineligible for these respective programs. The report identified several reasons for why these firms were ineligible, including improper subcontracting practices, lack of control and ownership, and improper use of SDVOSB status, among others. Further, the report noted VA's document-review process under the 2006 Act "in many cases was insufficient to establish control and ownership . . . [and] in effect allowed businesses to self-certify as a veteran-owned or service-disabled veteran-owned small business with little supporting documentation."

**7. What is more important making easier for firms to be verified or preventing fraud?**

We have not conducted the work necessary to answer this question. However, we believe that both the accessibility of the SDVOSB program as well as implementing reasonable fraud-prevention controls are important to the program's success. Without effective fraud prevention controls, deserving SDVOSBs may miss out on opportunities to access federal contracting dollars. When that happens, not only are businesses harmed, but their employees, who are frequently other veterans, are as well.

**8. The VA has only taken action on six of the 13 recommendations you issued in October 2011. Has VA indicated why they have not completed the remaining seven recommendations?**

Overall, VA is making good progress in implementing our prior recommendations. As stated in the agency comments section of our report, VA has indicated that it has begun taking action on some of the remaining recommendations issued in October 2011 related to the vulnerabilities in the verification process implemented by VA after the 2010 Act. However, during the course of our work, VA either did not demonstrate that it had taken action to implement the open recommendations or did not provide the supporting documentation needed to show that they were in fact implemented. In our report, we noted any progress VA has made with regard to each open recommendation. We will continue to work with VA to confirm the status of its efforts to address our recommendations and will close them as supporting documentation is provided.

**9. Does CVE have the right funding and staff to carry out its mission?**

The scope of our work did not assess VA's funding and staffing to carry out its mission. However, when inquiring about the budget for CVE, we have experienced difficulty getting supporting documentation. We are aware that VA's funding has significantly increased in recent years and VA has hired more CVE staff and contractors to conduct initial file reviews and site visits. Our prior work identified that VA has not evaluated the experience of CVE staff to assess whether appropriate personnel are available to perform application reviews. To be successful, VA needs expert staff dedicated to maintain the program's integrity.

**10. In your opinion, does CVE know how many firms have been verified under the old and new law?**

VA has demonstrated an inability to accurately track the extent to which firms have been verified under both verification processes VA chose to implement under the 2006 Act and the 2010 Act. During the course of our work, VA made numerous conflicting statements about its progress verifying firms listed in VetBiz under the more-thorough process the agency implemented in response to the 2010 Act. These statements indicate that VA has taken an inconsistent approach to prioritizing the verification of firms and has been unable to accurately track the status of its efforts. For more detail on the VA conflicting statements, see Enclosure II.

**11. What prevents CVE from keeping track of the number of verified firms?**

According to VA, CVE has had difficulty providing consistent aggregated reporting of the number of verified firms due to limitations of its VetBiz Case Management System (VCMS). In addition, VA stated that the lack of a comprehensive case-management system has created the need for aggregated workarounds and resulted in

inconsistent aggregate reporting. The limitations of its current case-management system make it difficult to track the inventory of firms and as the limitations of the case-management system increase over time, the potential of CVE to lose track of how many firms have been verified also increases.

**12. In your opinion, did the VA establish a two year re-verification requirement to get rid of the backlog?**

The law gives VA latitude to modify its regulations as it deems necessary. During the course of our work, VA did not mention its intentions of extending the verification eligibility from one year to two years. On June 27, 2012, VA issued updated regulations extending the eligibility period from one year to two years before re-verification is required. Extending the eligibility period may allow VA to focus its efforts on more thoroughly verifying firms that were previously verified under its less-stringent 2006 Act process. However, the extension allows thousands of firms to continue to be eligible for contracts even though they have not undergone the more-thorough verification process. We remain convinced that the verification process utilized by VA prior to the 2010 Act process does not provide reasonable assurance that only eligible SDVOSBs participate in the program.

**13. In your opinion, how often should SDVOSBs be verified?**

The scope of our work did not assess how often SDVOSBs should be verified. However, any response to this question would depend on the quality of the verification process that is used. We believe that from a fraud-prevention standpoint, all firms should be verified under the more-thorough 2010 Act verification process. This process includes unannounced and announced site visits and review and analysis of company documentation, such as tax returns and operating agreements. After all firms are verified under the 2010 process, VA could then consider a somewhat longer timeframe for re-verifying firms by considering certain risk-based factors such as whether or not a firm has actually received a SDVOSB contract to date.

*Enclosure II*

**Record of VA Conflicting Claims**

During the course of our work, VA made numerous conflicting claims regarding its actions related to its transition from the vulnerable verification process used under the Veterans Benefits, Health Care, and Information Technology Act of 2006 to the more-thorough process established under the Veterans Small Business Verification Act, part of the Veteran' Benefits Act of 2010. Below, those statements are grouped by topic and reproduced as VA provided them to us. We were unable to determine which claims are factual and accurate. As stated in our report, these statements indicate that the agency has taken an inconsistent approach to prioritizing the verification of firms and has been unable to accurately track the status of its efforts.

*Timing of VA's transition from the 2006 Act verification process to the 2010 Act verification process*

- February 16, 2012 (meeting): Firms were verified using the 2006 Act verification process between January and May 2011.
- April 23 (meeting): Full document reviews using 2010 Act verification process began in February 2011.
- May 12, 2012 (e-mail): No firm was verified under the 2006 Act process after February 2011. Verification reviews using the 2006 Act process had been stopped by January 2011. CVE began the 2010 Act verification process at the end of December 2010.
- May 21, 2012 (e-mail): Several firms in VetBiz were verified under the 2006 Act process after February 2011. At least two were verified under the 2006 Act process as late as May 2011.

*Firms that received the first eligibility documentation request letter sent in December 2010 under 2010 Act verification process*

- April 23, 2012 (meeting) and May 2, 2012 (e-mail): In April, a number of firms that had not been verified under the 2010 Act verification process were removed from VetBiz. While those firms were not sent the initial December 2010 document request letter because of human data-entry errors, they were removed because they failed to respond within 30 days to a later document request.
- May 12, 2012 (email): The above firms were sent the December 2010 letter.
- June 20, 2012 (meeting): All firms in VetBiz did not receive the initial document request letter sent in December 2010. Firms verified under the 2006 Act

within the six months before December 2010 did not receive the letter. As of December 2010, 13,000 firms had been sent the document request.

*Number of VOSB and SDVOSB firms removed from VetBiz for failing to respond to a document request under the 2010 Act verification process*

- April 23, 2012 (meeting): Approximately 3,050 firms were removed between late March 2012 and early April 2012.
  1. May 2, 2012 (e-mail verifying April 23 meeting details): 3,108 firms instead of 3,050.
  2. May 2, 2012 (e-mail attachment): Attached spreadsheet showed 3,019 firms were removed as of the April 23 meeting.
- May 8, 2012 (e-mail): 2,984 firms were removed as of April 2012.

*Number of expired VOSB and SDVOSB firms verified under the 2006 Act process targeted for future removal from VetBiz*

- April 23, 2012 (meeting): About 900 firms.
- April 27, 2012 (e-mail): About 3,500 firms.
- May 2, 2012 (e-mail): About 2,660 firms and 2,646 firms (in the same e-mail).
- May 3, 2012 (e-mail): 2,584 firms.
- May 12, 2012 (e-mail): 2,581 firms. (The difference between this and the May 3 figure may be explained by firms changing their status.)

*Firms in VetBiz whose eligibility term, determine under the 2006 Act process, had expired, that were sent documentation requests in order to go through the 2010 Act verification process*

- April 23, 2012 (meeting): 900 firms about to be removed from VetBiz were sent a request for documentation for 2010 Act verification.
- April 27, 2012 (e-mail): The 900 firms were not sent the above request.

*Deadline for removing expired firms that failed to provide requested documentation for the 2010 Act verification process*

- April 23, 2012 (meeting): May 2012.
- April 27, 2012 (email): May 4, 2012.
- May 12, 2012 (e-mail): May 18, 2012.
- May 31 (e-mail): July 5, 2012.

*Explanation for delays in removal from VetBiz of firms whose eligibility term, as determined through the 2006 Act verification process, had expired*

*Software update*

- April 23, 2012 (meeting): A software update to a new electronic system prevented the 900 firms with expired eligibility terms from being identified.
- April 27 (e-mail): The software update did not affect the 900 firms.

*Congress*

- May 12, 2012 and May 21, 2012 (e-mail): Firms removed from VetBiz in April had not been removed from VetBiz earlier in the year at the suggestion of Congress due to backlog. VA memo sent as support for this discussion relates to "reverification" under the 2010 Act process.

*Technical Difficulties*

- May 31, 2012 (e-mail): Firms were not removed from VetBiz because of technical difficulties.
- June 20, 2012 (meeting): The Verification Case Management System (VCMS) allows CVE to manage inventory and automatically notifies a firm on behalf of CVE when it is approaching a deadline for reverification.
- June 22, 2012 (meeting): VCMS is not accurate, is missing data fields, and contains dates differing from those in physical files. Firms previously identified as being verified under the 2006 Act process as late as May 2011 could be mistaken due to such software issues.

*Estimates for verifying all firms in VetBiz under the 2010 Act process (before implementation of the interim rule, amending 38 C.F.R. Part 74.15(a), which extended firms' eligibility terms)*

- July 11, 2011(meeting): May 2012.
- April 23, 2012 (meeting): Mid-August 2012.
- May 12, 2012 (e-mail): September 2012.

- July 10, 2012 (email): As of June 27, 2012, VA amended 38 C.F.R. 74.15(a) so that all firms verified under either the 2006 Act process or the 2010 Act process are eligible for a 24 month period instead of the previous 12 month period.

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**Materials Submitted For The Record**

OCT 10 2012

The Honorable Bill Johnson  
Chairman, Subcommittee on  
Oversight and Investigations  
Committee on Veterans' Affairs  
United States House of Representatives  
Washington, DC 20515

The Honorable Marlin A. Stutzman  
Chairman, Subcommittee on  
Economic Opportunity  
Committee on Veterans' Affairs  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Johnson and Chairman Stutzman:

At the joint hearing before your Subcommittees on August 2, 2012, Mr. James O'Neill, Assistant Inspector General for Investigations, promised to provide a response for the record regarding a question on how many Office of Inspector General (OIG) Service Disabled Veteran-Owned Small Business (SDVOSB) cases, open or closed, involved companies certified under P.L. 111-275, Veterans' Benefits Act of 2010.

As of August 31, 2012, 25 of the OIG's 158 open or closed SDVOSB cases were verified by the Center for Veterans Enterprise (CVE) under P.L. 111-275. Of those 25 cases, 10 were initiated based on a referral from CVE, and 4 were referred to us by CVE after we had received an allegation from another source. Further information on CVE's referral practices to the OIG should be addressed to the Executive Director, VA Office of Small and Disadvantaged Business Utilization.

If you have need additional information, please do not hesitate to contact my office. Thank you for your interest in the Department of Veterans Affairs.

Sincerely,

GEORGE J. OPFER

Copy to: The Honorable Joe Donnelly, The Honorable Bruce L. Braley

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August 3, 2012

Mr. Scott Denniston  
Executive Director  
National Veteran Small Business Coalition  
14408 Chantilly Crossing Lane  
#704  
Chantilly, VA 20151

Dear Mr. Denniston:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations and Subcommittee on Economic Opportunity joint oversight hearing titled *Odyssey of the CVE* on August 2, 2012. Please answer the enclosed hearing questions by no later than Friday, September 14, 2012.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all full committee and subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres-Jaen at [orfa.torres-jaen@mail.house.gov](mailto:orfa.torres-jaen@mail.house.gov), and fax at (202) 225-2034. If you have any questions, please call (202) 225-9756.

Sincerely,

Joe Donnelly  
Ranking Member  
Subcommittee on Oversight and Investigations  
DMT/ot

Questions for the Record from the Committee on Veterans' Affairs  
Subcommittee on Oversight and Investigations and  
Subcommittee on Economic Opportunity  
U.S. House of Representatives

**Odyssey of the CVE**

**August 2, 2012**

1. What is your overall perception of the VA's SDVOSB process and what specific areas need immediate attention?

NO RESPONSE RECEIVED FROM MR. SCOTT DENNISTON AT THE TIME OF PRINTED PUBLICATION

August 3, 2012

Mr. Richard F. Weidman  
Executive Director for Policy & Government Affairs  
Vietnam Veterans of America  
8719 Colesville Road  
Suite 100  
Silver Spring, MD 20910

Dear Mr. Weidman:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations and Subcommittee on Economic Opportunity joint oversight hearing titled *Odyssey of the CVE* on August 2, 2012. Please answer the enclosed hearing questions by no later than Friday, September 14, 2012.

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Sincerely,

Joe Donnelly  
Ranking Member  
Subcommittee on Oversight and Investigations  
DMT/ot

Questions for the Record from the Committee on Veterans' Affairs  
Subcommittee on Oversight and Investigations and  
Subcommittee on Economic Opportunity  
U.S. House of Representatives

**Odyssey of the CVE**

**August 2, 2012**

1. How different are the regulations between SBA, VA and the 8(a) program?
2. You state that many federal agencies believe that veterans must first register with VA. If VA has no control over this view what can VA do about it?
3. In your testimony you state that the VA should allow self-certification while they verify the. In the past the increased number of fraud and abuse was due to the VA relying on self certification with many ineligible firms being wrongly awarded contracts. Are you confident that returning to self-certification will not lead to an increase fraud and veterans losing contracts?

a. By allowing self-certification, would the VA have a major influx of veteran and non-veteran businesses applying and seeking to be verified, thereby, causing a greater backlog?

4. What is more important, making it easier for firms to be verified or preventing fraud?

5. According to CVE, one of the main reasons why companies are denied verification is because they fail to thoroughly review application requirements and fail to submit appropriate documentation. The CVE has now included tools in their website to guide companies through the application process. In your opinion, what are the top 5 reasons for denials?

6. In your testimony you mentioned that “most veterans are denied due to issues of control and that are many sections of the regulations which are subject to the interpretation of the reviewer.” Do you prefer that the VA have clear bright line tests of what would be a cause to deny verification or have some flexibility?

NO RESPONSE RECEIVED FROM MR. RICHARD F. WEIDMAN AT THE TIME OF PRINTED PUBLICATION

August 3, 2012

Mr. George J. Opfer  
Inspector General  
Department of Veterans Affairs  
801 I Street NW  
Washington, DC 20001

Dear Mr. Opfer:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations and Subcommittee on Economic Opportunity joint oversight hearing titled *Odyssey of the CVE* on August 2, 2012. Please answer the enclosed hearing questions by no later than Friday, September 14, 2012.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all full committee and subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres-Jaen at [orfa.torres-jaen@mail.house.gov](mailto:orfa.torres-jaen@mail.house.gov), and fax at (202) 225-2034. If you have any questions, please call (202) 225-9756.

Sincerely,

Joe Donnelly  
Ranking Member  
Subcommittee on Oversight and Investigations

DMT/ot

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Subcommittee on Oversight and Investigations and  
Subcommittee on Economic Opportunity  
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**Odyssey of the CVE**

**August 2, 2012**

1. Does SBA have tougher standards to be recognized as a veteran company?
2. How many self certified companies remain on CVE's VIP database?
3. Has it become too difficult for SDVOSBs to be verified and sign up in CVE's VIP database and does CVE ask for too much information?
4. Is CVE properly funded to review applications for the VIP database?
5. Does the current SDVOSB verification process by VA provide a high level of assurance that only eligible firms are verified?
6. Should VA be verifying firms every year?

7. What is more important, making it easier for firms to be verified or preventing fraud?

8. Has the VA made progress in their verification program to reduce the number of fraudulent SDVOSBs?

NO RESPONSE RECEIVED FROM MR. GEORGE J. OFFER AT THE TIME OF PRINTED PUBLICATION

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